

# City of Milpitas

455 E. Calaveras Blvd.  
Milpitas, CA 95035

File with: Milpitas City Clerk  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

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City Clerk's Office

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## APPEAL FORM

1. APPELLANT(S):

Name Aslam ALI  
Address: 1491 So. Main St.  
City, Zip Milpitas, CA 95035

2. DECISION BEING APPEALED:

I (we), the Undersigned, do hereby appeal a decision of the Planning Commission's approval of denial of application for  
USE PERMIT AMENDMENT NO. UA-  
PROJECT: Jerry's Market 2006-2  
LOCATION: 1491 S. Main St., Milpitas CA 95035  
DATE OF DECISION BEING APPEALED:

10/25/2006

3. STATE THE SPECIFIC RELIEF WHICH THE APPLICANT SEEKS:

Applicant seeks amendment to USE PERMIT  
To sell spirits, e.g. rum, vodka, scotch,  
to alcoholic beverage license (applicant  
presently sells beer & wine.)

4. SUMMARY OF REASONS WHY THE APPELLANT CLAIMS ENTITLEMENT TO THE RELIEF SOUGHT:

The Commission's denial of application was not based on substantial evidence and it was contrary to the legal standards for such decisions. Instead, the evidence supported granting the application of Jerry's Market to sell spirits in addition to beer & wine.

If more space is needed, attach additional sheets.

DATE: 10/26/2006

SIGNATURE

ADDRESS 1491 So. Main St.


☐ Filing Fee \$100.00

CITY Milpitas, CA 95035

PHONE 408-946-8050

PLEASE NOTE: Additional fees will be required for an expedited process.

e-mail: zoe2tm@hotmail.com

RECEIVED BY: 

DATE: 11/1/06

Please send notice to my Attorney also:

Richard D. Warren

929 Fresno Ave

Berkeley CA 94707

510-528-4423

e-mail: rickwarrene@pacbell.net

**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**October 25, 2006**

**I.  
PLEDGE OF  
ALLEGIANCE**

Chair Williams called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Ali-Santosa, Azevedo, Galang, Mandal, and Williams  
Absent: Ciardella and Tabladillo  
Staff: Bejines, Hom, Pio Roda and Williams

**III.  
PUBLIC FORUM**

Chair Williams invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV.  
APPROVAL OF MINUTES  
October 11, 2006**

Chair Williams called for approval of the minutes of the Planning Commission meeting of October 11, 2006.

Staff had no changes.

**Motion** to approve the minutes of October 11, 2006.

M/S: Mandal/Ali-Santosa

AYES: 4

NOES: 0

ABSTENTION: 1 (Azevedo)

**V.  
ANNOUNCEMENTS**

Staff had no announcements.

Commissioner Ali-Santosa announced that he would not attend the first Commission meeting in November. Chair Williams clarified there is only one meeting in November and December.

**VI.  
CONFLICT  
OF INTEREST**

Assistant City Attorney Pio Roda asked if the Commission has any personal or financial conflict of interest on tonight's agenda.

There were no Commissioners that identified a conflict of interest.

**VII.  
APPROVAL OF  
AGENDA**

Chair Williams called for approval of the agenda.

Staff has no changes to the agenda.

**Motion** to approve the agenda.

M/S: Galang/Azevedo

AYES: 5

NOES: 0

**VIII.**  
**CONSENT CALENDAR**  
**None**

Chair Williams asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

Staff had no changes to the consent calendar.

**IX.**  
**PUBLIC HEARING**  
**1. USE PERMIT**  
**AMENDMENT NO.**  
**UA2006-2 (Continued from**  
**September 27, 2006):**

Cindy Hom, Project Planner, presented Use Permit Amendment No. UA2006-2, a request for approval to add sales of all types of alcohol in conjunction with an existing convenience store located at 1491 South Main Street and recommended denial based on the finding noted in the staff report.

Commissioner Azevedo asked if a member of the Police Department is here tonight and Ms. Hom said yes.

Chair Williams asked if Section 57 that pertains to single-family residence being detrimental would apply to high density, mixed use project. Tom Williams, Planning and Neighborhood Services Director, said that Section 57 is applicable, however in terms of land use, staff will look at each application on a case-by-case basis.

Commissioner Mandal asked staff to clarify the memo that was handed out prior to tonight's meeting. Ms. Hom said that the first attachment is an e-mail from the applicant noting that he originally offered 100k to the HOA, but is now rescinding his offer to 50k to repair the common wall. The other attachments are e-mails regarding public comments that are in favor of the application. Mr. Williams added that right before the meeting, staff received the attachments and the memorandum.

Commissioner Azevedo asked how does the police report data compare with other convenient stores in the community. Steve Pangelinan, Field Services Division Commander for the Police department, said that he looked at some numbers with respect to the Dixon Mart and Liquors on Dixon Road comparing its similarity to its proximity to the residential community but there were 74 events related to that store within the same relative timeframe, 2001 to 2006.

Commissioner Azevedo asked if there was a possibility that once this store becomes a liquor store, will there be more police calls and Officer Pangelinan said it that could be a possibility.

Commissioner Mandal asked Officer Pangelinan if he could explain the data that was passed out to the Commission prior to the meeting. Officer Pangelinan said that the crime analyst ran a data report that showed there were 64 events that occurred near Jerry's market, and with those 64 events, it was determined that 45 events occurred at Jerry's market or closely in front of Jerry's market.

Vice Chair Galang said with regards to the police calls in 2001, do most of the calls come from Pines residents? Officer Pangelinan said that most calls are from the business owner himself, some are from the residents, and some are called in anonymously or from someone passing by.

Vice Chair Galang asked what does fraudulent transaction activities mean? Officer Pangelinan said that it could be somebody attempting to pass a bad check or someone attempting to use a stolen or fictitious credit card.

Vice Chair Galang asked if most of these calls come from Jerry's and Officer Pangelinan said yes.

Commissioner Mandal asked if fraudulent checks are a common thing that happens with other businesses and Officer Pangelinan said yes.

Chair Williams introduced the applicant.

**Aslam Ali, Owner of Jerry's Market, 1491 S. Main Street**, stated that his family bought the store about five years ago and they take their operation very seriously. His family has been in the business for over 25 years and have never sold liquor to underage minors. The market is well kept and very clean, and they try to serve the community as best as possible. He noted that he received over 500 petitions from his customers in support of his liquor license. Right now, his customers have to drive to San Jose, or Milpitas Liquor to get alcohol and there is no other store within walking distance near the Pines. He explained that a liquor store is needed in the area to serve the future residents that are coming right across the street from Jerry's. He also explained that Jerry's has equipment to see if a customer has a real or fake drivers license. He also pointed out that he has tried to bend over backwards in working with the neighborhood and they do not want to work with him.

Commissioner Azevedo said he read somewhere that the Mr. Ali had other liquor licenses at previous stores and sold to minors. Mr. Ali said that he has operated 80 to 90 stores and has had to rely on the employees, but in the past, his employees sold to minors about five to seven times. Now, though, he has a strict policy and sends employees to training and if they get caught selling to minors, they are terminated.

Commissioner Azevedo asked if Mr. Ali's machine takes into consideration a false ID and Mr. Ali said yes.

Commissioner Azevedo asked what guarantees does Mr. Ali have that he will get rid of the graffiti and the litter in the neighborhood. Mr. Ali said that Jerry's will do their best to have the area around Jerry's clean and they have done a much better job than the previous owner.

Commissioner Mandal said that it seems like Mr. Ali is really trying to work with the neighborhood and asked him if he is flexible enough to work with the HOA to come up with a solution that everyone is comfortable with.

Mr. Ali said that he has tried to bend over backwards for the HOA such as offering to put a net on a fence to prevent litter being thrown away or repairing a wall behind his store or adding lights near a dark alley and also offering to close at 11 a.m. instead of 2 a.m. He said he has offered many things but the HOA is not interested.

Commissioner Ali-Santosa said he attended an HOA meeting and met with Mr. Ali himself. He asked if his equipment is able to check on out of town passports. Mr. Ali said that 98% of his customers have California ID however the machine covers every state in the US.

Vice Chair Galang asked if Mr. Ali is aware of the number of police calls since 2001. Mr. Ali said in the last 5 ½ years, not one police officer has ever called him to complain about Jerry's. He didn't know that an incident report even existed until he saw the staff report. He noted that about a year ago, police officers paid him a visit and asked to see one of his videotapes because a neighbor was burglarized. He also pointed out that his store has fourteen cameras inside and outside of the store.

Vice Chair Galang asked Mr. Ali how many employees he has and he said four not including him and his wife.

Vice Chair Galang asked Mr. Ali if he works everyday and Mr. Ali said yes.

Vice Chair Galang asked if residents feel comfortable talking to him. Mr. Ali said he encourages residents to talk to him. He said six months ago, he contacted the HOA to have one of his employees clean up the park and pick up litter every single day once a day, however he needed their permission for that. He said he never got permission from them. When he bought the store, there were a lot of problems. He immediately installed two cameras in front of his store and stopped selling certain brands of cheap wine because it would not benefit his store or the neighborhood.

Commissioner Azevedo said he had been in the grocery business for 42 years and had a convenience store for 22 years so he can relate to Mr. Ali. He suggested that Mr. Ali wait for a while to try to work with the neighborhood and then come back in the future to apply for a liquor license. Mr. Ali said that the HOA is not interested and will say no. He has talked to them a number of times and the answer is always no.

Chair Williams opened the public hearing and noted those who wish to speak have a three-minute restriction imposed.

Commissioner Ali-Santosa asked that all speakers state their name, address, and proximity to the store.

**Rob Means, 1421 Yellowstone**, lives three miles away, stated that Mr. Ali is doing a good job with his business and the Commission should support him, if not, another store will pop up in town and will sell liquor. He felt that Mr. Ali is a very good man because he contributes to Little Leagues and the community and also pointed out that Mr. Ali is willing to give the HOA 50k and that should be enough to clean up the park and litter. He also suggested that the HOA install sprinklers so that the owners can turn them on at will and deter people from loitering. He is in favor of the project.

**Rick Warren, Berkeley, Attorney for Mr. Ali**, clarified that the reason the last meeting was continued was because they asked staff to go back to the police department to get more information about the police calls to see if there was a correlation of services attributed to Jerry's market. He said they were not permitted to see the original reports itself, so they trusted the police to see if there was any indication in those 45 calls, whether an employee or customer of Jerry's was involved in the police information. Of the 45 calls, 19 originated from employees calling because of fraudulent activity or they witnessed something happen to a member of the public. He is in favor of the project.

**Tammy, 1731 Starlite in the Pines**, said she is shocked to hear there is litter in the neighborhood because Jerry's is a very clean store. She said that if the Commission says no to Jerry's, they are saying no to the community. She pointed out that Mr. Ali had a donation box set up for someone that was hit by a driver. She is in favor of the project.

**Ramona Bennet, 2151 Old Oakland Road, Space 603**, lives about a mile from Jerry's, said that Mr. Ali takes his business very seriously and is vigilant about checking for underage drinkers. He is also very security conscious and is known as a responsible businessman. She is in favor of the project.

**James Meyers, 73 Lonetree Court**, lives about 100 feet from Jerry's, is opposed to the liquor license. He has nothing personal against Mr. Ali but is concerned about bringing liquor to the neighborhood because of his concern for the children. He is not in favor of the project.

**Debbie Lynch, 1799 Starlight Drive**, lives about three blocks from Jerry's, said that she felt that Jerry's should have his liquor license because of convenience. The store is very clean and she doesn't think it would make a big difference if he sold alcohol. She is in favor of the project.

**Dennis Smith, Senior Business Consultant and Milpitas Rotary member, 500 Glenmore Circle**, lives about two miles from Jerry's, stated that as a fellow member, Mr. Ali can be counted on for accountability. If he says he is going to do something he will do it. He said that Mr. Ali should be granted a liquor license. He said he was appalled to hear that Elmwood's proximity to Jerry's would be a problem and felt that should be taken up with the County, not Mr. Ali. He is in favor of the project.

**Willie Miller, 156 Lonetree Court**, lives in the second block behind Jerry's Market, said he goes to the park every day and does not see a lot of litter there but the park is on the other end away from the store, but when goes to Jerry's, it is very clean and he doesn't think that Jerry's should be held accountable for the graffiti because they are not selling spray paint. He is in favor of the project.

**Ms. McClay, School Teacher, 1848 Camphor Court**, lives a few blocks from Jerry's, and opposes the liquor license, said Mr. Ali is a good guy but she doesn't want liquor near her neighborhood. She said that a lot of people that spoke in favor of liquor don't live near the neighborhood. When inmates are released from Elmwood, they go directly to Jerry's and the children bused out of the school pass right near Jerry's. She supports small businesses but not hard liquor. She is not in favor of the project.

**Bobby Miller, 156 Lonetree Court**, lives 2 blocks behind the store, stated that she walks a lot in the neighborhood with her grandchildren and hasn't seen any troublemakers. She said Mr. Ali doesn't let people loiter outside his store and he has a very clean store and he always checks ID and is a very responsible man. The Palms restaurant has already had a killing across the street and she doesn't think the liquor will make a big difference. She is in favor of the project.

**Mike Ali, 2012 Oaks Drive, Pleasanton**, said that he likes Jerry's and how Mr. Ali treats customers. He said the City should let him have a temporary license for six months on a trial basis and if it doesn't work out, the City could revoke it. He is in favor of the project.

**Margie Stevens, 1683 Rocky Mountain, Milpitas, doesn't live in the Pines**, said the store is shiny bright and she has never seen a cleaner convenient store and never sees litter or graffiti when she walks around the store. She said if the store itself made calls to the police department it would be a good thing because it means they are paying attention to their customers. She said that Jerry's doesn't sell to minors and she is in favor of the project.

**Carmella Tomasini, 86 Woodland Court**, said this issue has come up many times before on several occasions. She is not opposed to the market, but selling hard liquor is out of the question because Zanker elementary is nearby. She said that Milpitas has so many stores that sell alcohol at decent hours and felt there are other more important issues to address at the City. She is not in favor of the project.

**Steven Thomas, 2151 Old Oakland Road, #532, San Jose**, lives 1 mile from Jerry's, said ever since Mr. Ali took over the store, he has seen a big improvement. He felt that if there are problems with the Pines, he doesn't think Jerry's should be held responsible. He is in favor of the project.

**Richard Langhorse, 1580 Fallen Leaf Drive**, lives 200 feet from Jerry's, said he doesn't have a problem with Jerry's. Mr. Ali has a very clean store and is a very polite and good man. The issue is with the community and the children that have to be bused by public transportation that pass through there. He said the neighborhood doesn't need liquor there. When Elmwood detainees are released, they are given money and walk to the bus stop in front of Jerry's. He is not in favor of the project.

**Janet Wilson, 83 Cedar Way**, 6 houses off of Main street, around the corner from Jerry's, said she has the brunt of the traffic and foot traffic in the neighborhood. She does support Jerry's getting the liquor license. She said there is an establishment across from Jerry's that serves liquor and Elmwood has always existed there. She felt that the comparisons of the Pines neighborhood to Dixon Landing liquors was not appropriate because she believes most stores in Milpitas do sell liquor adjacent to residential areas and schools. She appeals to her fellow Pines HOA to support the project because Mr. Ali has offered too much to make them feel comfortable. She also felt the residents should discipline their children not to litter. She is in favor of the project.

**Kerry Jergens, 1707 Starlight Drive**, 4 blocks from Jerry's, said the Pines has always had graffiti and glass problems but it is up to the neighborhood to take care of that. She doesn't see how it ties into Jerry's liquor license. She said if a kid wants liquor he can get it anywhere he wants. She said Jerry's is a lot cleaner than other stores and she gets carded all the time and feels safe there. She also pointed out that there was a domestic issue in the Pines and it took the police ten minutes to show up. She also said it is up to the community to handle the issues as far as keeping the neighborhood safe. She is in favor of the project.

**Michael Gellum, Manager at the trailer across the street, 1504 S. Main Street,** said that detainees are released from Elmwood at 2 a.m. and as far as graffiti is concerned he doesn't see it anymore. He said Mr. Ali is a good man and takes care of his store. He is in favor of the project.

**John Shields, 45 Lonetree Court, 3 houses down from Jerry's,** said that Mr. Ali is doing a good job with Jerry's, however people leave their beer cans in the streets. He doesn't think liquor will benefit the community, and as far as safety goes, he has seen broken bottles there and other disgusting things. He is not in favor of the project.

**Loretta James, 1389 Fallen Leaf Drive,** lives four blocks from Jerry's, said he is store is very immaculate and felt that teenagers will be able to buy liquor where they want and felt that Mr. Ali should be given a temporary license. She is in favor of the project.

**Mrs. Fe Aurelia V. Doyle, 80 Lonetree Court,** lives 80 feet from Jerry's, wants to know what the police recommendation. She pointed out that most of Jerry's supporters don't live there. She said she has been accosted from people in the neighborhood and that Mr. Ali's character is not in question but the selling of hard liquor is. She is not in favor of the project.

**Kathy Lee, 2022 Yosemite Drive, 3 miles from Jerry's,** said her relatives live behind Jerry's and she came to support him. She thinks Jerry's should get his liquor license because he manages a very good clean store and has good customer service. She felt that if he has a license, the store cannot cause any more problems because if the kids want liquor, they can go to any store. She is in favor of the project.

**Rosemary Fowler, 86 Lonetree Court,** said she does not want liquor in her yard and felt that bottles and being drunk do not mix with children. She is not in favor of the project.

**Eli, 1825 Forest court,** lives five blocks away from Jerry's, said that he is out early in the morning and never sees problem in front of the bus stop at Jerry's. He said that he is unsure of where he stands on this project and it is not Mr. Ali's character that should be questioned but the character of those who buy from him that should cause concern.

**Denise Perry, 45 Lonetree Court,** lives 5 houses from Jerry's, said that the Police initiated a DARE program in school and there are sex offenders in the Pines. She felt that when you start mixing alcohol and sex offenders it doesn't work. She is not in favor of the project.

**Karen Vialma, 2151 Old Oakland Road,** lives about a mile from Jerry's, felt that the neighborhood should be responsible for cleaning up litter and graffiti and not Jerry's. She is in favor of the project.

**Adrian Tidwell, 343 Manzanita Court,** lives ½ mile from Jerry's, said it is ridiculous that Jerry's is being considered a threat to the Pines and felt it is the responsibility of the residents to keep the neighborhood clean. She said she was one of the first volunteers to help paint away graffiti and even won an award and no one in the Pines offered to help. She said no one from the neighborhood is helping keep the place from turning into a slum and people are loitering in the park every Friday night. She is in favor of the project.

**Mike Novotny, 36 Greentree Way,** lives right behind Jerry's and is against the liquor license.

**Don, lives off of Landess, 2 miles from Jerry's,** says Mr. Ali is a model for all small business owners to follow in Milpitas and always takes the effort to make the best of his store and the vicinity. He is in favor of the project.



**Russ Bargstadt, 1307 Stardust Way, President of the HOA**, said this is the third time since he has been in the Pines that they have had to battle a liquor license. Mr. Ali did contact the HOA about picking up litter behind the store and the HOA contacted him back but said that he needed to provide liability insurance because the HOA didn't want to be sued. When people speak in favor, it is about what a nice guy Mr. Ali is but it is the impact on the neighborhood where the problem exists. How does the sale of liquor improve the neighborhood? He felt that Mr. Ali's beer and wine license should be revoked too.

Commissioner Azevedo asked if the board voted not to give Mr. Ali his permit. Mr. Bargstadt said they did a poll and the board was against it.

Commissioner Azevedo asked how did the homeowners vote. Mr. Bargstadt said that the 90% of the attendees were against the sale of liquor.

Commissioner Azevedo asked if he polled the homeowners themselves. Mr. Bargstadt said that they did not do a track wide vote.

Commissioner Azevedo asked if it is under the Commission's authority to pull a use permit.

Mr. Williams said they would have to take it separate from the application and would have to look at the degree of violations and get the ABC involved. Based on all of the research staff has done for this application, he would recommend that there are not sufficient findings.

**Matt Garvey, 96 August Court**, 1.8 miles from the store, has worked across the street from Jerry's for nineteen years and has never seen the store as clean as it is now. He felt that Mr. Ali should get his liquor license and he is in favor of the project.

**Guy Haas, 1277 Fallen Leaf, Treasurer of the HOA**, two blocks from Jerry's, said there is a liquor store near Dixon and he noticed they had a parking lot with a fence that they shared with residents and now it is completely blocked off. The HOA itself tries to get rid of graffiti. He said his wife worked at Elmwood and she says they release people at all times of the day, not just 2 a.m. He is not in favor of the project.

**Larry Laverdo, 1658 Fallen Leaf drive**, stated that Jerry's is a convenience store and he should be able to sell liquor. He is in favor of the project.

**Will Kong, 1696 Fallen Leaf Drive**, lives a block from Jerry's, is against Mr. Ali selling liquor because it is right near an elementary school and a residential neighborhood. He is not in favor of the project.

**Irene Johnson, 56 Lonetree Court**, lives in back of Jerry's, felt that Mr. Ali has been doing a great job however the problem is the liquor. She is not in favor of the project.

**Araceli Tapia, 1736 Starlight Drive**, is very upset about being here tonight and said that Mr. Ali approached her to sign a petition for a deli, not hard liquor. She even called the Principal of Zanker elementary school to inform her about the petition. She said that Mr. Ali's customers tried to intimidate the board and one of the ladies was so afraid she was going to move out of town. She is very disappointed in the process and would like someone to listen. She is not in favor of the project.

**Philip Tuitt, 1756 Pinewood Court**, two blocks away from Jerry's, is opposed to hard liquor because he felt that it doesn't improve public safety and is concerned the upgrade of the liquor license will not improve the neighborhood. He is against the project.

**Julie Goldberg, 251 West Capitol**, five blocks from Jerry's, felt that neighborhood doesn't need liquor because of safety issues. She is against the project.

**Mrs. Jose, Director of the Pines HOA, 1863 Starlight Drive**, 3 blocks from Jerry's representing the homeowners, said at the last two meetings, 100 people attended and everyone who spoke, spoke against having the hard liquor license being accepted. Tonight, there were 16 residents from the Pines against it and only ten from the Pines who were for it and the rest do not even live in the Pines. She is not in favor of the project. She asked if the Commission would want this in their backyard.

Commissioner Azevedo asked how many homes is part of the HOA, and Mrs. Jose said 862 homes.

**Dennis Graham, Fallen Leaf Drive**, lives 1 block from Jerry's, said at the HOA meeting, there were 9 people who voted for it, and of those nine, only four lived near Jerry's. 18 people in the Pines voted against it, and of those, 14 people voted for it and they lived a mile away. He said Mr. Ali just started cleaning up his store recently. He said 95% of the Homeowners are against the project. He is not in favor of the project.

**Lad Uni, 1825 Forest Court**, lives four blocks from Jerry's, said in the past he has voted against the license, however tonight, he felt that Mr. Ali should be given a provisional liquor license. He is in favor of the project.

**George Bessler, 2151 Old Oakland Road**, lives 1 mile from Jerry's, said he is concerned because there seems to be 800 homes in the Pines, but the number of people that are coming out is a small fraction of that number. He said the parties that are going out on Friday's are not the responsibility of Jerry's and the neighborhood should be held responsible for cleaning up their area. If Jerry's market closed tomorrow, he doesn't see how the community will be changed. He is in favor of the project.

**Anwar Virani, 6141 Capriana Common, Fremont**, pointed out that he has raised three children and one is of drinking age and felt that when talking about children and school it is about the values the parents teach their kids. He has his own kids visit liquor stores to buy food. He respects people with kids, however it is not the liquor store, it is the parents education and the values they teach. He has owned liquor stores and has dealt with litter for so many years and it has nothing to do with the liquor stores. He drives expressways everyday and he sees litter everywhere. He said people shouldn't blame it on Jerry's but should be educated. He is in favor of the project.

**John Jay, 542 South Main Street**, lives a mile away from Jerry's, said the issue is not Jerry's market but the people that attend. He thinks Jerry's will be an upscale market and Mr. Ali is trying to improve his business. He asked if there is an issue with drugs in Jerry's. He is in favor of the project.

**Richard Matfeld, 122 Woodland Court**, lives 200 yards from Jerry's, said he visits Jerry's market about five times a week. He drinks beer, wine and hard liquor and felt that this is a legal product that Jerry wants to sell and he doesn't see any reason why he shouldn't sell it. He is on Main Street, deals with people that are driving by all the time and he is not right next to the grade school. Felt the whole argument is ridiculous and felt that he should get a temporary license. He is in favor of the project.

**Matt Husein, 351 Macintosh Terrace, Fremont**, frequents Jerry's market, felt that having liquor would benefit the neighbors by adding another service. He felt that Mr. Ali should have a license on a trial basis. He is in favor of the project.

## Close the Public Hearing

**Motion** to close the public hearing.

M/S: Mandal/Azevedo

AYES: 5

NOES: 0

Commissioner Azevedo asked if the police have a recommendation whether Jerry's should be allowed a liquor license and Mr. Williams said that the police does not make a recommendation but the Planning Dept. does.

Commissioner Azevedo asked whether drugs is a problem at Jerry's and Mr. Williams deferred that question to Officer Pangelinan.

Commissioner Azevedo apologized to the audience for having to come out so many times, but stated that the Commission has to be fair and listen to everyone. He also explained that the applicant was the one who requested the continuance.

Vice Chair Galang asked Mr. Williams to explain the incidences from 2001 to the present and if Mr. Ali was notified about the police reports regarding loud noise and graffiti. Mr. Williams deferred the question to the police department.

Office Pangelinan said in terms of contacting Mr. Ali to address the concerns in the Pines, he can't say whether or not someone contacted Mr. Ali or the previous owners directly. For a number of years, the police have addressed the issues that many of the Pines residents have expressed in the form of increased patrol or in the form of community oriented police projects designed to address some of the problems heard tonight.

Commissioner Mandal said that people have a general tendency that when a problem happens, they are afraid to call the police department because they don't want their name to be published and don't want to bring more problems to the neighborhood. He asked if the police department has a facility where people can put their calls in anonymously.

Officer Pangelinan said the police have a few mechanisms by which people can bring information. When calls are received via 911 or general business lines, it is a routine procedure for the dispatchers to ask the caller to identity themselves so in the event if a call is disconnected the dispatcher can re-contact the person or they can be a potential witness to a criminal event but it is not a requirement. So in the event that someone wants to contact the police department via the website, via the crime tip hotline, or the general business line or 911, and they want to remain anonymous, that is something they can do, and the police will not push the issue and will still follow up on the information.

Commissioner Mandal asked if there was any recollection of any drug related issues at Jerry's. Officer Pangelinan said that he can't say specifically that Jerry's market is the source for drug activity, however there have been events that have occurred within close proximity or within the property of Jerry's that are associated with drug activity.

Commissioner Ali-Santosa said he reviewed this police report and noticed that based on the data presented from 2005-2006, he seen comments that the officer initiated the event. He said it seems like criminal activity tend to gravitate towards the location and asked Officer Pangelinan if he agrees.

Officer Pangelinan said the data does tend to suggest that. At any given area of town, there will be an officer who initiates activity such as making car stops or seeing potentially suspicious activity and they are going to take action. Jerry's market is a very busy place and officers are going to see a lot of vehicular and pedestrian traffic that goes right through which does generate attention.

Commissioner Azevedo asked if it is a matter of policy when the police are called to a residence, they park away from the residence and not directly in front. Officer Pangelinan said that it is not a matter of policy but it is a tactic that is employed as a matter of safety to the officer.

Commissioner Mandal asked if Milpitas was divided in different zones, would this area be considered a problem zone? Officer Pangelinan said he couldn't say that this section of town is any more fraught with criminal activity than any other section.

**Motion** to deny Use Permit Amendment No. UA2006-2 based on the findings in the staff report.

M/S: Azevedo/Ali-Santosa

AYES: 3 (Ali-Santosa, Azevedo and Mandal)

NOES: 2 (Galang and Williams)

**X.  
ADJOURNMENT**

The meeting was adjourned at 9:33 p.m. to the next regular meeting of November 8, 2006.

Respectfully Submitted,

Tom Williams  
Planning and Neighborhood Services  
Director

Veronica Bejines  
Recording Secretary

**CITY OF MILPITAS PLANNING COMMISSION  
AGENDA FOR OCTOBER 25, 2006  
CITY HALL COUNCIL CHAMBERS 7:00 P.M.  
455 E. CALAVERAS BLVD., MILPITAS, CA 95035  
(408) 586-3279**

- I. PLEDGE OF ALLEGIANCE**
- II. ROLL CALL**
- III. PUBLIC FORUM**

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Members of the audience are invited to address the Planning Commission on any subject not on tonight's agenda. Speakers must come to the podium, state their name and address for the Secretary's record, and limit their remarks to under three minutes. As an unagendized item, no response is required of the City staff or the Commission; however, the Commission may agendize the item for a future meeting.

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- IV. APPROVAL OF MINUTES:** October 11, 2006
- V. ANNOUNCEMENTS**
- VI. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- VII. APPROVAL OF THE AGENDA**
- VIII. CONSENT CALENDAR (Items with an asterisk \*)**

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At this time any member of the Planning Commission, member of the audience, or staff may request of the Planning Commission to have any item removed from or added to the consent calendar. If removed, this item will be discussed in the order which it appears on the agenda.

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**IX. PUBLIC HEARING**

- 1. USE PERMIT AMENDMENT NO. UA2006-2** *(Continued from September 27, 2006):* A request for approval to add sales of all types of alcohol in conjunction with an existing convenience store located at 1491 South Main Street (APN: 086-18-052), zoned General Commercial (C2). Applicant: Aslam Ali. Staff Contact: Cindy Hom (408) 586-3284. (PJ# 2450) *(Recommendation: Denial)*

**X. ADJOURNMENT**

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Any person aggrieved by any final decision of any, board, commission, or department head to the City of Milpitas may appeal the decision to the City Council by filing written notice of the appeal with the City Clerk within twelve (12) calendar days of the date of said decision and paying the required fee. This time limit shall be strictly enforced.

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***THE NEXT PLANNING COMMISSION MEETING IS November 8, 2006***

The Planning Division will provide a recorded agenda or minutes on standard cassette or printed in large type upon request for the visually impaired. In compliance with the Americans with Disabilities act, individuals requiring accommodation for this meeting should notify the Planning Division 48 hours prior to the meeting at (408) 586-3279, TDD (408) 586-3013.

**MILPITAS PLANNING COMMISSION SUBCOMMITTEE**

The Planning Commission Subcommittee consists of two members (currently Cliff Williams-regular member, Noella Tabladillo-regular member, Gunawan Ali-Santosa-alternate member) of the Planning Commission, who have approval authority for minor "S" Zone project reviews not involving public hearings. The project reviews are held at 6:30 P.M. on Planning Commission meeting nights, in the City of Milpitas Committee Conference Room First Floor, 455 E. Calaveras Boulevard.

- a. ADMINISTRATIVE PERMIT NO. AD2006-29:** A request for an administrative permit by Method 42 Productions to locate an approximately 25 foot tall robot in the Great Mall parking lot outside Dave and Busters, on October 30, 2006, for the annual KLA Tencor Halloween party located at 447 Great Mall Drive (APN: 086-24-060), zoned General Commercial (C2). Staff Contact: Kim Duncan, (408) 586-3283.

**KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE**

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review. FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE OPEN GOVERNMENT COMMISSION

at the City Attorney's office at the Milpitas City Hall, 455 E. Calaveras Blvd, Milpitas, CA 95035.

E-mail: [rpioroda@ci.milpitas.ca.gov](mailto:rpioroda@ci.milpitas.ca.gov)

Fax: (408) 586-3030

Phone : (408) 586-3000

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## MILPITAS PLANNING COMMISSION AGENDA REPORT

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Category: Public Hearing

Report prepared by: Cindy Hom

Public Hearing: Yes:   X   No:       

Notices Mailed On: 10/13/06

Published On: 10/12/06

Posted On: 10/13/06

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**TITLE:** **USE PERMIT AMENDMENT NO. UA2006-2 - Continuance**

**Proposal:** A request for approval to add sales of all types of alcohol in conjunction with an existing convenience store.

**Location:** 1491 South Main Street (APN 86-18-052)

**RECOMMENDATION:** Denial

**Applicant:** Aslam Ali, 1491 South Main Street, Milpitas, CA 95035

**Property Owner:** Same as above

**Previous Action(s):** "S" Zone approval and amendments, use permit, and subsequent denials

**Environmental Info:** Categorically exempt from further environmental review pursuant to Class 1, Section 15301 ("Existing Facilities"—"... permitting, ... licensing ... of existing ... private structures ... involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination") of the California Environmental Quality Act (CEQA) Guidelines.

**General Plan Designation:** General Commercial

**Present Zoning:** General Commercial (C2) with "S" Combining District

**Existing Land Use:** Convenience store

**Agenda Sent To:** Applicant and property owner  
Richard Warren, 929 Fresno Avenue, Berkley, CA 94707  
Bob Sylvia, ABC Consulting, 3984 Washington Blvd. #126,  
Fremont, CA 94538

Pat Forrest, Starlite Pines HOA, 3851 Charter Park Drive, San Jose,  
CA 95136

Russ Bargstadt, 1307 Stardust Way, Milpitas, CA 95035

Attachments:

- 1) Revised Police Summary Report
- 2) Copy of Applicant's letter dated September 9, 2006 to the Pines HOA
- 3) Copy of the Approved Minutes from the May 2, 2006 Community Meeting.
- 4) Copy of the Unapproved Minutes from the September 11 Community Meeting,
- 5) Photo Journal of site visit

PJ No.

2450

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**BACKGROUND**

This item was continued from the September 27, 2006 Planning Commission meeting at the applicant's request. The purpose of the continuance was to allow the applicant to further review the police activity report for Jerry's Market to ascertain whether any of incidents involved customers of the store and/or involved any employees of Jerry's Market. Staff provided the additional information as requested. A copy of the requested information is provided in the attachments. See Attachment 1.

***Police Summary Report Analysis***

As provided in the previous staff report, there were a total of 45 incidents that relate to Jerry's Market which are summarized in the following table:





Table 1: Summary of Reported Activity

INCIDENT TYPE	2001	2002	2003	2004	2005	2006	TOTAL # OF INCIDENT TYPES
FRAUDULENT TRANSACTION ACTIVITY	2*	5*	1*	1*	1*	3*	13
FIGHTS / ARGUMENTS	1	2	1		1	1	6
STOPS FOR SUSPICIOUS PERSONS/VEHICLES RESULTING IN ARREST		6	1			2	9
GRAFFITI		1					1
THEFT		1*	2*		2*		5
FOUND STOLEN VEHICLE ON PREMISE				1			1
REPORT OF VEHICLE ACCIDENT			2				2
INTOXICATED PERSON				1*	2*		3
PHYSICAL ASSUALT		1			1		2
LOUD NOISE						1	1
MISC (911 HANG UP CALL, SCARY DOG)						2*	2
TOTAL # OF CALLS PER YEAR	3	16	7	3	7	9	45

Calls From Jerry's Market Staff are indicated with and asterisk (\*)

As shown in the table above, (18) of the (45) police incidents were calls from Jerry's Market staff to report fraudulent transactions and theft. Therefore, 40% of the calls were Jerry's Market reporting the criminal activity.

There are (22) incidents of concern that substantiate the negative neighborhood impacts expressed by the neighboring Pines residents. Calls for service include (9) calls related to suspicious persons and/or vehicles stops. These calls resulted in police arrests of individuals for outstanding warrants, violation of parole, and drug possession; (3) calls of intoxicated person on the premise--2 of which were reported by Jerry's Market; (6) calls for physical fights and/or verbal altercations; (2) reports of physical assaults; (1) incident of graffiti, and (1) call for loud noises.

In further analysis, Police Department records indicate that (3) of the (22) incidents of concern listed above involved a customer of Jerry's Market and are noted in items 15, 26, and 35 of the Police Activity Report for Jerry's Market. However, (3) of the remaining (19) incidents in which



it was undetermined if the individual involved was a customer, the individuals were observed with open bottles of beer as noted in item no. 6, 7, and 33. In another incident (item 10), a person was loitering in front of the business to conduct sale and transfer of drugs and ultimately arrested for possession of drugs.

Based on the police incident reports there is a nexus between calls for service at Jerry's Market and the store's hours of operation. Almost all of the calls for service occur regularly during the store's hours of operation and diminish during hours the store was closed.

It is staff's opinion, the sale of hard liquor would perpetuate the ongoing activities that stem from the property because the establishment would continue to offer individually packaged beverage containers that are ready for immediate consumption. As demonstrated in the public testimony, police records and staff site visits, persons on the subject property have been cited on several occasions for public intoxication. In particular, police records have identified individuals with open beer bottles and public comments from the residential neighbors indicate drinking in common area between Jerry's Market and residential homes occurs as evidenced by the littering of beer bottles. The store's operations negatively impact the surrounding neighborhood by enabling public nuisances such as public intoxication to occur within the area, the introduction of unsavory people, and fostering objectionable conditions in the neighborhood. Sale of all types of alcohol would make these conditions worse.

### **Community Outreach**

The applicant met with the Pines Home Owner's Association and nearby residents on several occasions. The purpose of the community meeting was to obtain community input on the matter.

On August 3, 2006, the applicant met with the adjacent property owners along Lonetree Court and Greentree Way to discuss the specific community concerns expressed during the public hearing. Through this process, the applicant offered additional measures to address concerns related to crime activity. The measures were added as means to reduce the nuisances identified by the neighboring residents. The proposed conditions are contained in the letter dated September 9, 2006 and distributed to the Pines residents and at the September 11, 2006 Pines HOA meeting. (See Attachment 2)

### **Second Community Meeting**

The applicant held a second community meeting with the Starlite Pines HOA on September 11, 2006 to present and discuss proposed conditions of approval offered by Jerry's Market. The proposed conditions that were discussed at the community meeting included the following:

1. **REDUCED HOURS OF OPERATION:** Jerry's Market is presently allowed to operate from 6:00 a.m. to 2:00 a.m. The applicant proposed to operate from 6:00 a.m. to 11:00 p.m. every night.
2. **CLOSURE OF THE BACK PARKING AREA:** Close parking lot between the hours of 10:00 p.m. and 6:00 a.m.
3. **CRIME ACTIVITY AND PREVENTION:** Provide the Starlite Pines HOA \$100,000.00 to assist with nuisance prevention efforts. This contribution could be used as determined by



the HOA. For example, hiring a professional Neighborhood Watch" coordinator or off duty police officers to enforce HOA rules.

4. ADD "GOOD NEIGHBOR" SIGNS: Add "Good Neighbor" signs in the parking lot to remind customers to avoid loud noise and music that might disturb nearby neighbors.
5. LITTER AND GRAFFITI PREVENTION: Pick up litter and abate graffiti twice each day.
6. IMPROVE VIDEO SURVEILLANCE OF PARKING AREA: Install two additional cameras (4 total) to give complete coverage of the parking area and retain video recordings for 14 days and make them available to law enforcement upon request.
7. ADD VIDEO SURVEILLANCE OF JERRY'S PARKING AREA: Install additional video surveillance of the HOA's side of the common wall provided the HOA agrees that Jerry's Market will not be liable for providing such service.
8. SIGNS NOT TO LOITER AND DRINKING OF ALCOHOL IS PROHIBITED: Applicant will provide improved signs reminding customers not to loiter and prohibit any drinking of alcohol on the property.
9. REPAIR OF COMMON WALL: Applicant agrees to offer to contribute \$10,000.00 to the HOA to be used for the repair of the common wall on the property line.
10. LIMITING FLOOR AREA THAT MAY DISPLAY ALCOHOLIC BEVERAGES: The applicant agrees to limit the display of alcoholic beverages to no more than 45% of the total floor area.

At the September 11, 2006 community meeting, approximately 60-70 people were in attendance including the applicant and staff. In summary, twelve (12) of the thirteen (13) people who spoke on the item were opposed to the proposed conditions as stated above and the application request to sell hard liquor. The HOA Board voted unanimously to oppose the permit and conditions offered by the applicant. The residents and Pines HOA board maintain their earlier position that the sale of hard liquor will exacerbate the existing problems with people littering, loitering, attracting unsavory people, and that the proposed use is incompatible with the neighborhood. Included with the staff report is a copy of the Starlite Pines Homes Association Board of Directors Meeting Minutes and Manager's Notes. (See Attachment 3)

#### *Other Observations*

As directed by the Planning Commission staff met with the Pines HOA President and toured other park areas and greenbelts in the vicinity to determine if similar problems were evident in other areas of the Pines neighborhood. Staff observed the following conditions:

##### *Lonetree Court Area*

1. Pieces of litter found along the walking path in the Pines Development behind Jerry's Market
2. Graffiti on utility box and wooden fence

##### *Greenbelt area that abuts S. Abel Street and Capitol Avenue*

1. Numerous cigarette butts and empty cigarette boxes
2. Various litter including empty McDonald beverage cup, food wrappers, etc.
3. Several empty beer bottles and beer can

##### *Mini Park end of Evening Star Court*

1. Litter
2. Cigarette butts, matches, and discarded cigarette lighters
3. Empty beer bottle



4. Shattered beer glass on sidewalk and into the tan bark area of the playground
5. Tagging on wall
6. Empty condom wrapper
7. Used condom
8. Vandalism of play equipment

Mini Park near Hwy 880 sound wall and Summerfield

1. Graffiti on park furniture

Greenbelt walking path along Hwy 880

1. No observation of littering or graffiti.

Greenbelt walking path adjacent to Montague Expressway

1. Graffiti on PG&E Power pole
2. Litter

It appears that most of the litter, graffiti, and common area for gathering are along the greenbelt pathway and mini parks that adjacent to S. Abel Street. It is staff's opinion that it is not a systemic problem within the Pines neighborhood because the problems are concentrated on one side of the development (mainly on the east side of the development).

At the June 14, 2006 meeting, the Planning Commission also directed Staff to inquire with the Police Department whether there are any Police records that would validate public comments regarding drug paraphernalia found in the common areas around Jerry's Market and throughout the Pines Neighborhood. According to Police records there are no recent reports of discarded drug paraphernalia. However, in 2001, the Police Department initiated a Community Oriented Project because of the influx of calls received for Jerry's Market, Lonetree Court, and Pinewood Park. The project resulted with arrests for drug activity in Lonetree Court Park.

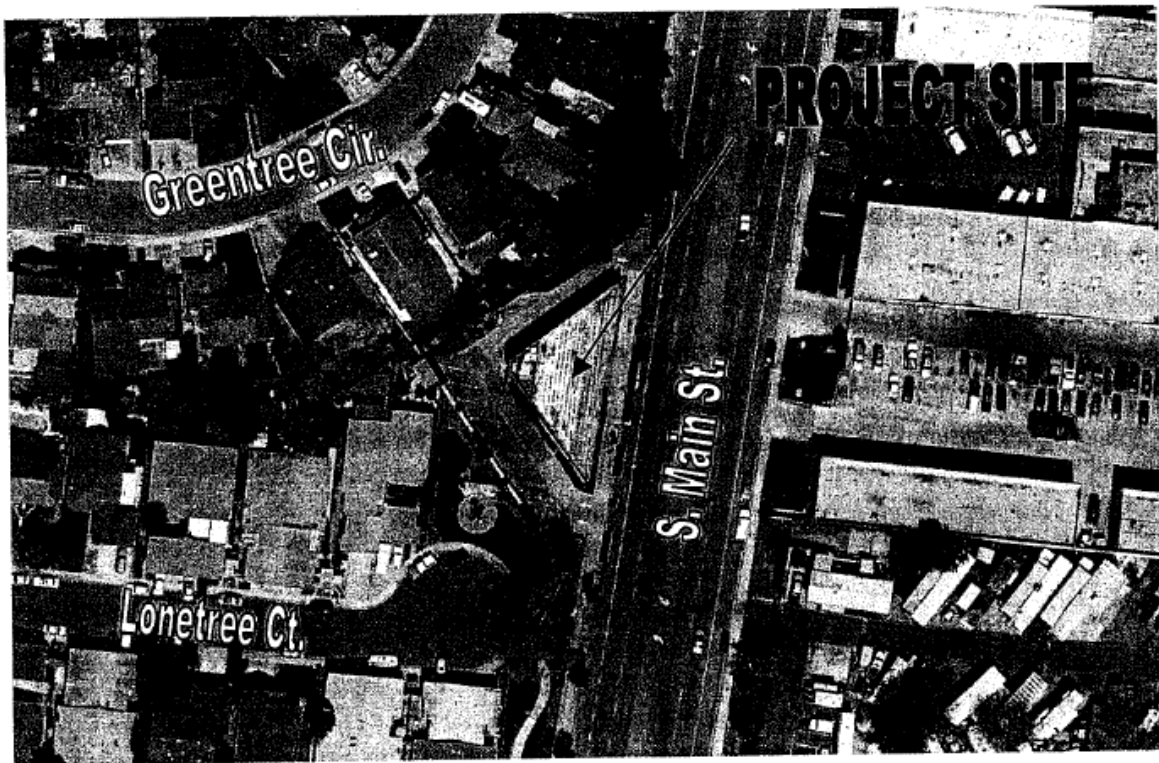
The Planning Commission also inquired if the Public Works Park Maintenance Section encountered any discarded drug paraphernalia in the park area during routine maintenance. The City's Park Maintenance Section indicated that there are no reports of discarded drug paraphernalia in the Pinewood Park Area. The Park Maintenance Section maintains Pinewood Park only. All other mini parks and greenbelt areas are maintained by the HOA. Staff also inquired with the Pines HOA property management if they or their park maintenance company maintains a log or reports that would account for where and when drug paraphernalia was found. The response from the Pines HOA property management was that neither keeps records of these types of findings.

### Site Description

Jerry's Market is located on a .51-acre site and is situated between the Starlite Pines residential development and South Main Street. An aerial photo of the subject site is provided in the next page:







The surrounding land uses include single-family homes to the north, west and south. East of the project site is South Main Street and various automotive repair shops, a mobile homes park, and a motel.

The project site is currently zoned General Commercial (C2). Adjacent zoning districts include: Single Family Residential (R1-6) Zoning District to the west and Multi-Family, Very High Density Residential (R4) to the east. Currently the City has received Planning applications to redevelop the motel, mobile home site, and the South Bay Tech Business Park to multi-family, very high density residential. New residential project proposed in the area include Baystone, Aspen Village, and Estrella as well as Paragon that is currently under construction at the corner of South Main Street and Montague Expressway.

### THE APPLICATION

The application has been submitted pursuant to Section 19.03-20 (General Commercial, Conditional Uses, Liquor stores) and Section 57.00 (Conditional Uses Permitted by the Commission) of the Milpitas Zoning Ordinance. The applicant is requesting approval of a conditional use permit to allow sales of all types of alcohol in conjunction with an existing convenience store (Jerry's Market). The sale of beer and wine for off-site consumption is currently allowed as a legal non-conforming use. Based on the Planning files, the 1982 use existed prior to the Zoning requirement for a Conditional Use Permit. The applicant maintains that the use of the site will remain a convenience market and that the sale of alcohol products will be secondary to the sale of convenience and food items.

### ISSUES



For approval of this Use Permit Amendment, the Planning Commission must make the following findings:

1. Conformance with the General Plan
2. Conformance with the Zoning Ordinance
3. The proposed use and location will not be detrimental or injurious to property, public health, safety and welfare and conforms with the General Plan and Zoning Ordinance.

***Conformance with the General Plan and Zoning Ordinance***

The Project conforms to General Plan and is consistent with Implementing Policy 2.a-I-6 which encourages a balanced economic base that can resist any downturns in any one economic sector. Although the proposed use is a conditionally permitted with a use permit in the C2 Zone and serves the general commercial needs of the City, it is not consistent with Section 57 (Use Permits) for neighborhood impacts which are described in the section below.

***Detrimental or injurious to property, public health, safety and welfare***

As indicated in the earlier in the staff report and subsequent attachments, the Pines neighborhood adamantly opposes the Project. The sale of hard liquor would be not suitable with the surrounding area given the location abuts residential homes and is within proximity to Zanker School and the Elmwood Correction Facility. Staff could not make the sufficient finding that the proposed use will not be disruptive to public safety and general welfare. The propose sale of hard liquor would perpetuate the negative impacts that are already experienced in the neighborhood. The Police reports validate the community concerns related to loitering, intoxicated people on the premise, and attracting unsavory individuals.

**Conformance with CEQA**

The proposed project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 ("Existing Facilities"—"... permitting, ... licensing ... of existing ... private structures ... involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination") of the California Environmental Quality Act (CEQA) Guidelines.

**RECOMMENDATION**

Close the Public Hearing. Deny Use Permit Amendment No. UA2006-2 based on the follow Findings.

**FINDINGS**

1. The Project conforms to General Plan in that it encourages a balanced economic base that can resist any downturns in any one economic sector.
2. The Project is in conformance with the C2 Zoning Ordinance. The use is conditionally permitted with a use permit in the C2 Zone and is consistent with the purpose and intent of the C2 zone by serving the general commercial needs of the City.



3. The Project is not in conformance with Section 57 because the finding cannot be made that the proposed use will not be detrimental or injurious to property or impact public health, safety and general welfare given the following reasons:
  - a) The proposed use is not compatible with the surrounding single-family neighborhood and adjacent park. The use would negatively impact the adjacent residents and park areas. There is considerable opposition within the Starlite Pines residential development for the sale of hard liquor as indicated through community meetings and written comments about liquor being consumed in common areas of Starlite Pines, the alcohol aspect of the business invites unsavory individuals who are disruptive with noise and deposit litter near the market. The sale of hard liquor would exacerbate the problems that currently exist.
  - b) The use is not suitable to the area given the location near residential homes and its close proximity to Zanker School and Elmwood Correctional Facility. Based on public comments, adjacent residents are troubled with graffiti, littering, and gathering of people who use the park areas and greenbelt pathways to smoke, drink and conduct other nuisances as evidence by the debris left behind. These activities deter residents from the customary use of the park area and the recreational enjoyment of these areas. Jerry's Market is less than 500 feet from Zanker Elementary School and is within the path of travel for Middle School and High School students. Additionally, Jerry's Market is also within walking distance of Elmwood Correctional Facility.
  - c) The use is anticipated to perpetuate the existing negative impacts to the neighborhood that are already experienced in the area based on the Police report and public comments. Over 45 incidents within a six-year period have been reported by the Milpitas Police Department that are related to Jerry's Market.
  - d) The sale of hard liquor does not provide a community benefit given the proximity to other liquor outlets within the area provide the same service.
4. The Project is categorically exempt from California Environmental Quality Impact Act (CEQA).



# ATTACHMENT # 1

## JERRY'S MARKET ACTIVITY July 2001 – July 2006

1. July 27, 2001; 12:11 pm [01-208-054]

Business owner reports having received 2 fraudulent checks.

2. October 15, 2001; 6:16 pm [01-288-160]

Business reports that fraudulent transactions occurred.

3. November 11, 2001; 12:01 am [01-315-001]

Physical fight between two men. Both were separated when officers arrived. One was contacted inside store. One of the involved combatants reported the incident to police. The fight occurred in front of the store. It is undetermined whether either of the combatants were store customers.

4. January 7, 2002; 12:15 pm [02-007-063]

Business reports that 2 fraudulent checks were passed.

5. January 9, 2002; 1:06 pm [02-009-080]

Business reports having received a fraudulent check

6. February 2, 2002; 4:47 pm [02-057-100]

Officers contacted suspicious person in the parking lot of the business. Officers observed that the person was holding an opened container of beer. The person was arrested for an outstanding arrest warrant. It is undetermined whether the person arrested was a store customer. The officers initiated this event. No call for service was received.

7. February 27, 2002; 4:21 pm [02-058-106]

Suspicious person stopped by officers in the parking lot of the business. Officers observed that the person was holding an opened container of beer. The person was arrested for an outstanding warrant. It is undetermined whether the person arrested was a store customer. The officers initiated this event. No call for service was received.

8. March 23, 2002; 5:42 pm [02-082-114]

Officers contacted suspicious person in the parking lot of the business. Officers observed as the person was urinating against a wall. It is undetermined whether the person arrested was a store customer. The officers initiated this event. No call for service was received. The person was arrested for two outstanding arrest warrants.

9. April 4, 2002; 9:54 pm [02-094-156]

Customer walked out of the store after shopping. She called police to report that she saw 2 suspects "tagging" an exterior wall of the business, and she provided suspect information to officers. Officers followed-up and identified the suspects. The business owner was contacted and did not desire any further action from police.





## **JERRY'S MARKET ACTIVITY**

**July 2001 – July 2006**

**10. April 5, 2002; 6:36 pm [02-095-131]**

Officers began watching a suspicious person loitering in front of the business. Officers observed the person for at least 30 minutes. The person engaged a passer-by and an apparent exchange occurred. Officers contacted the person, and found that he was in possession of drugs. It is undetermined whether this person was a store customer. The officers initiated this event. No call for service was received.

**11. June 11, 2002; 8:40 pm [02-162-147]**

Officers observed a suspicious person standing in the parking lot of the business, near a motor home. Officers began speaking with the person and determined that he had an outstanding felony warrant for his arrest. The person was arrested. It is undetermined whether this person was a store customer. The officers initiated this event. No call for service was received.

**12. October 18, 2002; 11:24 pm [02-291-204]**

3 adult males physically fighting in front of the business. One male was down on ground with injuries upon arrival of officers. A passer-by went into the store to ask the clerk to call 911 to report the fight. It is undetermined whether the combatants were customers of the store.

**13. October 25, 2002; 6:12 pm [02-298-021]**

Employee reports a burglary to the business occurred.

**14. November 7, 2002; 3:35 pm [02-311-107]**

Employee reports suspect inside store attempting to cash fraudulent check.

**15. November 8, 2002; 10:34 pm [02-312-177]**

Mentally challenged female adult accosted and sexually assaulted by customer in front of business. The suspect exited the store, and walked northbound. The suspect saw the victim, who was walking southbound toward the store. The suspect accosted the victim approximately 40 feet north of the store and sexually assaulted her. The victim's mother reported the incident to police.

**16. November 23, 2002; 3:04 pm [02-327-106]**

Verbal argument between male and female in front of business. Officers arrived to mediate the dispute. No arrests. An anonymous person reported the incident. It is undetermined whether the two people involved were customers of the store.



**JERRY'S MARKET ACTIVITY**  
**July 2001 – July 2006**

17 December 3, 2002; 10:35 am [02-337-062]

Officers contacted a suspicious person in the parking lot of the business. Officers discovered that the person had two outstanding warrants for his arrest. It is undetermined whether this person was a customer of the store. The officers initiated this event. No call for service was received.

18 December 7, 2002; 4:45 pm [02-341-111]

Employee reports customer attempting to cash bad check

19 December 11, 2002; 8:42 pm [02-345-175]

Employee reports fraudulent transaction

20 February 25, 2003; 10:31 am [03-056-044]

Employee attempting to detain fleeing customer who tried to cash bad check.

21 March 1, 2003; 4:24 pm [03-060-120]

Non-injury auto collision in driveway to business parking lot. One of the involved parties called police to report the incident. Both involved parties were store customers.

22 May 19, 2003; 2:09 pm [03-139-080]

A vehicle was stolen from the parking lot of the business. The car had been parked in the lot for 5 days due to engine trouble. The vehicle owner reported the crime to police. It is undetermined whether the vehicle owner was a customer of the business.

23 June 7, 2003; 11:27 pm [03-158-271]

Vandalism: One customer of the business intentionally damaged the vehicle of another customer while both were in the parking lot of the store. The victim customer called to report the incident to police.

24 August 1, 2003; 5:08 am [03-213-038]

Employee reports burglary to business.

25 September 8, 2003; 11:11 am [03-251-073]

Two pit-bull dogs in front of store scaring customers. The store clerk called to report the incident to police.



## JERRY'S MARKET ACTIVITY

July 2001 – July 2006

26 September 21, 2003; 3:56 pm [03-264-107]

Suspicious person detained by officers in front of store. Person arrested for possession of drugs and violation of parole. The suspicious person was a store customer. Officers observed and recognized the person as he walked out of the business. The person was a known parolee. The person's vehicle was parked in front of the business. The officers initiated this event. No call for service was received.

27 October 3, 2003; 11:54 pm [03-276-248]

Several males physically fighting in parking lot of business. Officers discovered one involved person with head injuries. Two of the males physically resisted officers when contacted. An anonymous caller reported this incident to police. It is undetermined as to whether the involved parties were store customers.

28 March 26, 2004; 5:37 pm [04-086-171]

Employee reports fraudulent transaction at business.

29 April 23, 2004; 11:10 pm [04-114-239]

Employee reports intoxicated person sleeping in parking lot for past 5 hours.

30 June 7, 2004; 6:30 am [04-159-033]

Stolen vehicle found parked in lot of business. The vehicle was originally stolen in San Jose. The victim happened to find it parked in the lot of the store. The victim called to report this incident to police. The victim was not a store customer.

31 January 2, 2005; 9:14 pm [05-002-174]

Employee reports intoxicated person in store causing a disturbance

32 January 29, 2005; 3:19 pm [05-029-131]

Mentally challenged person physically assaulted and injured in front of business. Both the victim and suspect were in front of the store when the assault occurred. It is undetermined as to whether the victim or suspect were store customers. The caretaker of the victim reported this incident to police.

33 February 24, 2005; 4:34 pm [05-055-169]

"Man down" report in front of business. Officers contact a passed-out intoxicated man. Officers discovered that the intoxicated man was asleep on the sidewalk in front of the business. There was a puddle of vomit and an empty 40 oz. bottle of beer next to him. The person who reported this incident to police was not identified. It is undetermined as to whether the intoxicated man was a store customer.

34 May 31, 2005; 10:02 am [05-151-073]

Employee reports suspect attempting to cash stolen check.



**JERRY'S MARKET ACTIVITY**  
**July 2001 – July 2006**

35 July 19, 2005; 10:09 pm [05-200-195]

Two males fighting in front of business. Both involved males were customers of the store. The disagreement between the two began while both were in the store. The fight occurred after they walked out. An anonymous person reported the incident to police.

36 August 4, 2005; 12:53 pm [05-216-082]

Theft from a vehicle parked in front of business. The victim left the top to his convertible down and went inside the store to make a purchase. When he came out a few minutes later, he realized that his cell phone had been stolen. The victim reported this incident to police.

37 August 30, 2005; 2:43 am [05-242-014]

Burglary in progress at business. An employee discovered the crime and reported the incident.

38 January 9, 2006; 3:06 pm [06-009-145]

Stolen credit card used at business.

39 January 9, 2006; 3:07 pm [06-009-146]

Fraudulent check cashed at business.

40 April 21, 2006; 9:20 pm [06-111-229]

Suspicious person stopped by officers in lot of business. Arrested for outstanding warrants. It is undetermined whether the suspect was a store customer. The officers initiated this event. No call for service was received.

41 May 23, 2006; 12:24 pm [06-143-108]

Forged check cashed at business.

42 May 31, 2006; 6:11 pm [06-151-245]

Suspicious juvenile stopped by officers in front of business. Arrested for violation of probation warrant. It is undetermined whether the suspect was a store customer. The officers initiated this event. No call for service was received.

43 June 2, 2006; 3:30 pm [06-153-168]

911 hang-up call from pay phone.



**JERRY'S MARKET ACTIVITY**  
**July 2001 – July 2006**

44 June 29, 2006; 8:03 am [06-180-065]

Domestic quarrel between male and female while parked in front of business. Female broke window to vehicle. It is undetermined whether either party was a store customer. Correctional Officers from the Elmwood Correctional Facility reported this incident to police.

45 July 13, 2006; 11:52 pm [06-194-236]

Several people talking loud and laughing in the lot of business, disturbing neighbors. Officers contacted several people in the lot and instructed them to quiet down. It is undetermined whether these individuals were customers of the store. The person who reported this incident to police was a nearby resident who was disturbed by the noise.



## ATTACHMENT # 2

JERRY'S MARKET & DELI  
1491 S. Main Street, Milpitas, CA 95035

September 9, 2006

Dear Neighbors:

Please attend the HOA meeting at Zanker School this Monday, September 11, 2006 at 7:00 p.m. to discuss whether you support or oppose our application to be allowed to sell spirits (such as scotch, vodka, rum) in addition to the beer and wine we already sell. We intend to makeover our store to become a "Trader Joe's"-type store offering the range of products that make those stores so popular. We will not become a liquor store.

We have had several meetings with the residents of the Pines, especially those who live nearest the store. They have voiced opposition to Jerry's request to sell spirits based on their concerns about crime, noise and litter in the Pines common area behind Jerry's Market. To address those concerns, Jerry's Market, in exchange for the right to sell spirits, is offering the following conditions that will certainly improve things for Pines residents.

If Jerry's Market is permitted to sell spirits along with beer and wine, we propose the following conditions on the City's conditional use permit and the ABC license:

**REDUCED HOURS OF OPERATION:** Jerry's Market is presently allowed to be open from 6:00 a.m. to 2:00 a.m. We offer to close at 11:00 p.m. every night.

We will also close off the rear parking lot from 10:00 p.m. until 6:00 a.m. These changes alone will substantially reduce the potential for noise disruptions to our nearest neighbors.

### CRIME ACTIVITY AND PREVENTION

Several Pines residents bordering the common area park near to Jerry's Market have described seeing evidence of drug use, drinking, loitering and other conduct that inhibits the use of the park by them and their children. They also told us about efforts to start up a "Neighborhood Watch" program and arrange closer coordination with the Milpitas police department to improve this situation.

Jerry's Market offers to pay the HOA \$100,000 to bolster its crime prevention efforts. This money could be used as the HOA determines. For example, a professional "Neighborhood Watch" coordinator could be hired to get that program up and running and ensure it is effective. Off-duty police could be hired to enforce the HOA's rules against drinking and loitering in the common areas and any other trouble spots.

**ADD "GOOD NEIGHBOR" SIGNS:** We have already put up several "Good Neighbor" signs in our parking lot to remind our customers to avoid loud noise and music that might disturb our nearby neighbors.



**LITTER AND GRAFFITI PREVENTION:** On Jerry's Market property, Jerry's Market will pick up litter and paint over graffiti twice each day.

**IMPROVE VIDEO SURVEILLANCE OF JERRY'S PARKING AREA:** We will install two more cameras (4 total) to give complete coverage of the parking area and we will keep the video recordings for 14 days and make them available to law enforcement upon request.

**ADD VIDEO SURVEILLANCE OF HOA'S COMMON AREA.** Jerry's also offers to the HOA that it will provide and maintain on Jerry's property one or more cameras that will view the HOA side of the common wall, provided the HOA will agree that Jerry's Market will not be liable for providing such service.

**SIGNS NOT TO LOITER AND NO DRINKING OF ALCOHOL:** We will provide improved signs reminding our customers not to loiter and prohibiting any drinking of alcohol on our property.

**REPAIR OF COMMON WALL:** Jerry's Market offers to contribute \$10,000.00 to the HOA to be used for the repair of the common wall on our property line.

**LIMITING FLOOR AREA THAT MAY DISPLAY ALCOHOLIC BEVERAGES:** To prevent changing our convenience store to a liquor store, no more than 45% of our customer floor area may be used to display alcoholic beverages.

If our applications to the City and ABC to sell spirits are approved with the above conditions, both the City and the ABC will be able to enforce our compliance with these conditions with stiff fines, permit and license suspensions or permit and license revocation.

We invite your further suggestions, and we ask that you agree to support, or withdraw your opposition to, our application to sell spirits subject to the above conditions.

Sincerely yours,

Aslam Ali



# ATTACHMENT # 3

Jun 16 06 09:01a

JONES & FORREST INC.

408-269-9070

p.1

Jones and Forrest, Inc.  
3851 Charter Park Drive, #10  
San Jose, Ca. 95136  
(408) 269-9070  
(408) 269-9070 FAX

**JONES AND FORREST, INC.**

## Fax

To: Cindy - City of Milpitas

From: Donna Marie

Phone: 586-3293

Date: 6/16/06

Starlite Pines (HOA)

Re: Annual Meeting Minutes 5/1/06 CC: Page 1 of 5

☐ Urgent

☐ For Review

☐ Please Comment

☐ Please Reply

☐ Please Recycle

\* Comments:





Revised per Board Comments  
June 12, 2006

STARLITE PINES HOME ASSOCIATION  
ANNUAL MEETING  
MINUTES AND MANAGER'S NOTES

MAY 1, 2006

The meeting was called to order by Russ Bargstadt at 7:29 p.m.

VERIFICATION OF QUORUM

A quorum of homeowners was represented at the meeting with a total of three hundred seventy (370) homeowners being represented. There were two hundred eight-eight (288) homeowners represented by proxies and eight-two (82) homeowners in attendance.

PROOF OF NOTICE OF MEETING

Dewayne Cantu reported that notice was given of the meeting to all homeowners in accordance with the requirements of California Civil Code and the governing documents for Starlite Pines Home Association.

PRESIDENT'S ADDRESS

Russ Bargstadt (President): Stated that the Association has done well this year and has been able to keep cost down for the third year. Unfortunately, the Association experienced one (1) disaster, that being the fallen tree. Guy Hlass then stated that Patricia Forrest of Jones and Forrest communicated that the majority of the tree has been removed. Currently the cost for the removal of the root ball from the tree is being addressed with the City of Milpitas.

AGENDA

At this time Rod Mier stated that tonight's meeting was scheduled as the Annual Meeting of homeowners only. The City previously informed homeowners tonight's meeting was set up for the discussion of the license application made by Jerry's Deli.

Michael Paul Novotny (36 Greentree Way): Stated that he would like to add the discussion of the license application for hard liquor that is being reviewed by the City of Milpitas.

Due to the large turn out of homeowners, Rod Mier made a motion to allow homeowners to speak for three (3) minutes regarding the liquor license application. This motion was



Starlite Pines Home Association  
Annual Meeting Minutes and Manager's Notes  
May 1, 2006  
Page 2 of 4

also to allow the City of Milpitas Planning Staff to speak. The motion was seconded by Guy Haas. A vote by the show of hands was requested from homeowners in attendance. Fifty (50) raised their hands in agreement and seven (7) opposed.

### **APPROVAL OF MINUTES AND MANAGER'S NOTES**

A copy of the May 2, 2005 Reconvened Annual Meeting Minutes and Manager's Notes was distributed to the homeowners present at the meeting. Time was given for the homeowners to review them. A motion was made by Roderick Mier, seconded by Guy Haas and unanimously passed to approve the Minutes and Manager's Notes of the May 2, 2005 Reconvened Annual Meeting as presented.

### **ASSOCIATION FINANCES**

Guy Haas, Chief Financial Officer, stated dues will not increase for the 3<sup>rd</sup> year. The Association has been able to keep cost down.

The question was asked if homeowners were going to be allowed to approve the budget. Guy Haas explained the only time homeowners review and approve the budget is if the budget reflects an increase of more than 20%. Fortunately this year there is no increase.

### **ELECTION OF DIRECTORS**

Three (3) Board member seats expire this year. Each candidate elected this evening's meeting is elected for a three (3) year term. Four (4) homeowners have stated they would like to be candidates for the Board of Directors. Those homeowners are Bob Church, Raul Gonzales, Elizabeth Hoehnle and Lisa Jose. Raul Gonzales requested his name be removed as a candidate.

Nominations were opened to the floor.

- Roderick Mier nominated Israel Gil. Mr. Gil accepted the nomination.
- Elizabeth Hoehnle nominated Araceli Tapia. Mrs. Tapia accepted the nomination.

There being no further nominations from the floor, a motion was made by Roderick Mier, seconded by Guy Haas and unanimously passed to close the nominations from the floor.

Ballots were distributed and collected.

The following candidates were elected as Board Members: Bob Church, Elizabeth Hoehnle and Lisa Jose.



Starlite Pines Home Association  
Annual Meeting Minutes and Manager's Notes  
May 1, 2006  
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### NEW BUISNESS

- A. **Plaque in Common Area.** A few homeowners stated they would like to obtain a plaque in memory of Pearl Zanker and install it in the common area at Greentree Way. After some discussion, it was agreed that no more than \$1,000.00 will be spent.
- B. **Solar Powered Lights for Common Areas** – It was stated that some homeowners had expressed their concern for better lighting in the common areas. The Board of Directors stated that research will be done to obtain pricing for solar powered lighting. Once obtained, the homeowners will be advised of the additional cost.
- C. **Jerry's Deli** – Mr. Ali from Jerry's Deli introduced himself and stated his purpose of attending the meeting was to obtain homeowner input regarding his application for selling hard liquor. His application for a change in his use permit was submitted to the City of Milpitas.

Mr. Ali explained he has been in business for five (5) years and has been involved in the community. He lived in Pleasanton and recently moved to Milpitas (four months ago) and would like to retire in the area. He also would like to provide 100% of his services to the community.

The City of Milpitas Planning Staff members stated that the application for the sale of hard liquor is currently under review and will take at least six (6) months for approval or denial.

1. Mrs. Dale Doyle (Lonetree Court): Mrs. Doyle lives behind Jerry's Deli and opposes the sale of hard liquor. She has seen strangers in the park and bottles being thrown over the wall. She is afraid to use the path that runs behind her unit.
2. Gurbux Singh (1167 Sunrise Way): If the local law allows Jerry's Deli to have a liquor license, he is ok as long as hard liquor is not sold to the wrong people.
3. Anil Sachdeva (1580 Pinewood Way): As long as the laws are followed, he is okay with the issuance of a liquor license.
4. Minh Thai (62 Woodland Court): If the owner is responsible, he should be given the opportunity.
5. William Lee Mulcahy (16 Greentree Circle): He has seen bottles thrown over as well as people climbing over the wall. This is a large concern for the children who play in the area.
6. Loren Plumb (39 Greentree Way): His concern is not the storeowner, but the sales of hard liquor. Mr. Plumb said his home has been burglarized four (4) times.



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He is not aware if the incident was caused as a result of Jerry's Deli, but fears there may be an increase in the number of incidents.

7. M. Eugenia Allen-Egbert (1568 Fallen Leaf Drive): Homeowners must first attempt to change the current laws, because they are not uniform.
8. Ms. Irene C. Johnson (56 Lonetree Court): The common area walkway path runs along the perimeter of her unit. This path has always been for Pines' homeowners. Not a public access. With the availability of hard liquor, she feels this pathway will become a nuisance and more traffic will be seen. There will be more trespassers and loitering.
9. Roderick Mier (408 Gibbons Court): He has seen future plans currently being reviewed by the City of Milpitas Planning Department and agrees those plans are for the greater good of the Association. The future plans will not be affected by a decision regarding Jerry's Deli selling hard liquor.

In addition to the above homeowners there were approximately twenty homeowners who spoke sharing their displeasure in the thought of Jerry's Deli being issued a liquor license. There were approximately three residents that were in favor of the liquor license being issued to Jerry's Deli.

After the group of speakers were completed, it was asked if there were additional people who wanted to speak in favor of approval of Jerry's Deli being granted a hard alcohol license. There were no additional speakers on behalf of Jerry's Deli. The Board then asked for a show of hands of the 82 homeowners present that were against the issuance of a hard alcohol license. Nearly every hand was raised.

#### HOMEOWNER QUESTIONS AND CONCERNS

Michael Paul Novotny (36 Greentree Way): The playground on Woodland Court has people loitering. He would like to have the bench removed to prevent this.

Russ Bargstadt (President) stated that any homeowner witnessing loitering should contact the City of Milpitas Police Department.

#### ADJOURNMENT

There being no further discussion, the meeting was adjourned at 8:51 p.m.





# ATTACHMENT # 4

## STARLITE PINES HOME ASSOCIATION BOARD OF DIRECTORS MEETING MINUTES AND MANAGER'S NOTES September 11, 2006

### BOARD OF DIRECTORS:

Russ Bargstadt	President	Present
Rod Mier	Vice-President	Present
Michelle Irvine	Secretary	Present
Guy Haas	Chief Financial Officer	Present
Lisa Jose	Director	Present
Bob Churich	Director	Present
Elizabeth Hoehnle	Director	Present

### MANAGEMENT COMPANY

Patricia E. Forrest of Jones and Forrest, Inc.

### NON-HOMEOWNERS PRESENT

Mr. Ali, Jerry's Market  
Mr. Rick Warren, Attorney for Jerry's Market  
Cindy Hom, City of Milpitas, Planning Staff Member  
Michael Tomlin, Zanker Elementary School

### CALL TO ORDER

The meeting was called to order by Russ Bargstadt, President, at 7:05 p.m.

### ADDITIONS and/or DELETIONS to the AGENDA

A motion was made by Rod Mier, seconded by Guy Haas, and unanimously passed to approve the Agenda for the September 11, 2006 Board of Directors' meeting as presented.



## **JERRY'S MARKET**

Rick Warren provided a handout to all of the homeowners present noting the conditions being offered by Jerry's Market for the Association's agreement to not challenge the issuance of a variance to Jerry's Market use permit to allow off premises liquor sales. The following are the conditions offered:

### **Reduce Hours of Operation**

Jerry's Market will close at 11:00 p.m. every night.  
Close off the rear parking lot at 10:00 p.m.

### **Bolster Crime Prevention**

Jerry's Market will pay the Association \$100,000 to bolster its crime prevention.

The money could be used as the Association determines.  
Hire "Neighborhood Watch" coordinator or off-duty police.

### **Repair Common Wall**

Jerry's Market will contribute \$10,000 to the Association to repair of the common wall on the common property line between Jerry's Market and The Pines.

### **Add "Good Neighbor" Signs**

Jerry's Market has put up several "Good Neighbor" signs to remind its customers to avoid loud noise and music.

### **Add Video Surveillance of Association's Common Area**

Jerry's Market will provide and maintain on Jerry's property one or more surveillance cameras.

### **Improve Video Surveillance of Jerry's Market Parking Area**

Jerry's Market will install two more cameras (4 total) to give complete coverage of the parking area.

### **Improve Litter Pick-up and Graffiti Prevention**

Jerry's Market will pick up litter and paint over graffiti twice each day.

### **Improve Signs Prohibiting Loitering and Drinking Alcohol**

Jerry's Market will provide improved signs reminding its customers not to loiter and prohibiting any drinking of alcohol on Jerry's Market property.

### **Limit Floor Area that May Display Alcoholic Beverages**

No more than 45% of Jerry's Market's customer floor area may be used to display alcoholic beverages.



The question was raised: "What happens to the promises made by Mr. Ali if Mr. Ali sells the store? Mr. Warren stated the conditions run with the land and will be continued with the new owner.

Loren Plumb, 39 Greentree Way – Mr. Plumb contends there is a law presently on the books that a soft liquor license would not be issued to a new store coming into this area, let alone a hard liquor license. Mr. Warren disagreed that there was such a thing as a soft and hard liquor license.

Mike Novotny, 36 Greentree Way – Mr. Novotny wants to know why this is being brought before the homeowners again? These conditions were already discussed with homeowners at the walk through and they were turned down. Mr. Novotny stated the option of closing the parking lot early may not be available to Mr. Ali. Mr. Novotny echoed Mr. Plumb in his comment that if a new store was going into the current Jerry's Market location, a soft liquor license would not be allowed. Jerry's Deli is requesting a hard liquor license through a legal technicality. One comment made in a previous meeting with Mr. Ali and Mr. Warren, is that Mr. Ali is requesting a hard liquor license because he cannot make enough money as it is. Now; however, Mr. Ali is offering the Association \$100,000. It appears Mr. Ali is making sufficient money.

Scott Goldberg, 251 Capitol Avenue – Mr. Goldberg wanted to know if Mr. Ali is willing to put additional money up if one of his children gets hurt.

Carmella Tomasini, 86 Woodland Court – Ms. Tomasini does not feel comfortable to walk alone in this area. She also does not understand why this issue is again being brought up to the homeowners.

Mrs. Gigi Doyle, 80 Lonetree Court – Mrs. Doyle stated that she is angry. It doesn't appear that the homeowners and their wishes are being listened to. She won't be bribed into giving her approval to the issuance of a hard liquor license. Mrs. Doyle stated that Mr. Ali has offered to purchase the last home located on Lonetree Court (next to the playground) which is presently for sale for \$665,000. Mrs. Doyle stated that there had been much misrepresentation by Mr. Ali and various people working on his behalf. Mr. Ali presently has several liquor licenses. Mr. Ali has lost some of the licenses for selling to minors. Mrs. Doyle gave an account of the police calls pursuant to Jerry's Market. Mr. Warren responded that Jerry's Market made a number of the police calls due to someone issuing a bad check, using a false credit card, etc.

Ms. Tapia, 1736 Starlite Drive – Ms. Tapia stated that someone acting on behalf of Mr. Ali came to her front door and wanted her to sign a petition agreeing to the issuance of an off premises liquor license. She questioned the person regarding what was to be sold at the market. She had to ask many questions before the person asking for her signature gave her the true story of what would be sold at the market. Ms. Tapia is concerned for the children of The Pines. Ms. Tapia wanted to know why Jerry's Market has not been doing



beautification to the property in the past. Why now? Ms. Tapia has a day care center and she likes to take her children on group walks. She refuses to take them past Jerry's Market because of the profanity, drinking on the sidewalk, and double parking in the driveway while customers are waiting for a parking place in Jerry's Market's lot.

Wilfred Kong, 1696 Fallen Leaf Drive – Mr. Kong has been to a number of the meetings regarding the approval of a use permit variance to Jerry's Market for the sale of hard alcohol. At each meeting, it has been made clear that homeowners in The Pines are against the issuance of a use permit variance and the selling of hard liquor at Jerry's Market. Why is it necessary to continue having to go to meetings? Is Jerry's Market trying to tire homeowners out so they will approve the issuance of a use permit variance to allow the sale of hard alcohol? Mr. Kong spoke directly to the City of Milpitas staff at the meeting and wanted to know why this information was not taken to the City previously?

Lauren Plumb, 39 Greentree Way – Mr. Plumb questioned Mr. Warren's statement that most of the calls to the police were from Jerry's Deli. Only two of the six calls were from Jerry's. He feels that \$100,000 is not sufficient.

Scott Goldberg, 251 Capitol – Mr. Goldberg stated he has heard numerous promises pertaining to what Jerry's Market is going to do to help. Mr. Goldberg no longer takes his son on walks through the Pines, "because he finds derelicts "sleeping it off."

John Shields, 45 Lonetree Court – Mr. Shields stated that he has nothing against Mr. Ali. Hard liquor sales are not wanted in the vicinity of The Pines. A request for a hard alcohol license has previously been turned down to previous owners of Jerry's Market. Mr. Shields is tired of having to fight this time after time. He is interested in quality of life and not profit. Russ Bargstadt stated he has been through this three times since he has lived at The Pines. He feels that this will continue to happen. The question was asked if the Association could get the Jerry's Marketing wine and beer license revoked. Russ Bargstadt said there is a way to accomplish this, but this evening's meeting was not the place to discuss this and he was not prepared to talk about it this evening.

Ms. Haas, 1277 Fallen Leaf Drive – Ms. Haas has concerns over the people who are being released from jail during the day and night times. The first place they head to is somewhere to get a smoke and a drink. Ms. Haas says there is a lot of competition for Jerry's Market when it comes to selling hard liquor. She doesn't think children should have to walk past a place of business selling hard liquor on their way to school.

Gigi Doyle, 80 Lonetree Court – Ms. Doyle wanted to know why The Pines does not start proceedings to have Jerry's Market beer and wine license revoked?

Rosemary Fowler, 86 Lonetree Court – Ms. Fowler wanted to echo the sentiments of other homeowners. She and her husband were returning home from a trip when they came upon Jerry's Market. There were numerous cars double parked waiting to get parking spaces in the parking lot. There were so many that they were backed up into the street. She and her





husband tried to go around them and one of the cars pulled over so they had to go further out into oncoming traffic to get around them. The vehicle that was blocking their way then turned around and followed them home. Ms. Fowler went to Jerry's Market last Saturday to see what changes had been made. She noticed that the dirty magazines were gone. She didn't see any drug paraphernalia. She did see graffiti in the parking lot. She noted that there is affordable housing being built just across the street from Jerry's Market. It is her concern that if a hard liquor license is issued, there will be many more instances of problems.

Rod Mier, 415 Gibbons Court – Mr. Mier's remarks were addressed to the City Staff at the meeting. His concerns are the effect on property values if a hard alcohol license is issued. He has not heard anything that will increase property values, only decrease. Quit bringing this issue to the homeowners again and again. The homeowners are tired of coming to the meetings. Maybe Mr. Ali would sell the building to the Association to be used as a recreation building for The Pines' residents.

Tom Morse, 1253 Stellar Way – Mr. Morse stated a lot of good comments were made by the homeowners tonight. There is a Planning Commission meeting on September 27, 2006. Is this meeting open to the public to make comments? Cindy Hom said "Yes". Mr. Mier stated that Jerry's Market is open until 1:00 a.m. The only people who would be likely to be stopping by Jerry's at this time of the morning would be folks who were coming home from someplace like the movies at the Great Mall. Who are they selling to?

Raul Gonzales, 1300 Sunrise Way – Mr. Gonzales is in favor of Mr. Ali being granted a use permit. He feels the previous comment made regarding affordable housing was a racist comment. Russ Bargstadt requested that comments not be made on a personal level. They should be kept professional.

Richard Longworth, 1480 Fallen Leaf Drive – Mr. Longworth takes his hat off to those people who have stood up and made their positions known regarding the sale of hard alcohol. He is interested to know what additional Mr. Gonzales has to say.

Mr. Gonzales, 1300 Sunrise Way – Mr. Gonzales feels that Mr. Ali is just trying to make a living.

Rod Mier stated that he would like to hear the position of each of the Board members.

Guy Haas, 1277 Fallen Leaf Drive – Mr. Haas is against the issuance of a hard liquor license to Jerry's Market. Mr. Haas also raised the question whether there is any other place in town that sells hard liquor that close to homes, commons area, or a school.

Elizabeth Hoehnle, 1120 Starlite Drive – Her kids and husband shop at Jerry's Market. She has always been opposed to the issuance of a hard alcohol sales license.

Michelle Irvine, 1873 Forest Court – Opposed to the hard liquor license.



Lisa Jose, 1683 Starlite Drive – Against the issuance of a hard liquor license.

Bob Churich, 1267 Sunrise Way – He is not impacted by the selling of the alcohol. He is acting on behalf of the desires of the homeowners behind Jerry's Market and is against the issuance of a hard liquor license.

Russ Burgstadt, 1307 Stardust Way – He is not affected by Jerry's Market. He is trying to fulfill his fiduciary responsibility as President of Starlite Pines Association.

A motion was made by Rod Mier to close the discussion regarding Jerry's Market. The motion was seconded by Guy Haas and unanimously passed.

### **HOMEOWNER QUESTIONS AND CONCERNS**

1. Mike Tuan Vu, 1087 Starlite Drive, Lot 822 – This is the home that has been billed for the irrigation repair caused by the installation of the block wall at his property. As of August 31, 2006, this amount remains unpaid on the Tenant Balance Due Report.
2. Willie Miller, 156 Lonetree Court, Lot 348 – As of the August 31, 2006 Tenant Balance Due Report, the fine remains unpaid.
3. Lori M. Ray (Daughter of Mr. Huerta), 1811 Fallen Leaf Drive, Lot 135 – A letter remains to be directed to Ms. Ray regarding providing information that she is on the Grant Deed.
4. Delbert and Fe Benson, 424 Starlite Court, Lot 805 – Mr. and Mrs. Benson submitted a drawing requesting permission to change the flat roof of the garage to a pitched roof. The garage is presently detached from the home. When installing the pitched roof, it will be connected to the home. The Benson's are also requesting permission to install a sliding glass door to gain entry to the garage from the exterior of the home where the roof has connected the garage to the home. Discussion was held and a motion was made by Rod Mier to approve the installation of a pitched roof over the garage and connecting to the home and the installation of a sliding glass door to the area between the house and garage. The motion was seconded by Guy Haas and unanimously passed.

### **MANAGER'S NOTES**

1. Jerry's Deli – Discussed earlier in the Minutes and Manager's Notes.
2. Eucalyptus Tree Removal – Rod Mier contacted Pat Forrest and stated the Reserve Conservation District is no longer in San Jose. He was going to contact them and request assistance pertaining to the "V" ditch cracks and erosion of the creek bank.



Older's Landscaping was requested to investigate the irrigation line with sprinkler heads which are between the back of the soundwall and the creek bed. Discussion was held and a motion was made by Rod Mier to spend up to \$1,000.00 in legal fees for ascertaining the Association's liability and position regarding creek bank erosion. The motion was seconded by Lisa Jose, and unanimously passed.

The information has been received pertaining to the Santa Clara Water District department to be billed for the emergency cut up and removal of the Eucalyptus Tree. Pat Forrest will now bill them.

3. The Revised Delinquency Policy as approved by the Board of Directors was mailed to all homeowners.
4. Complaint to Department of Real Estate – At the June meeting, additional complaint forms were provided to the Board of Directors. This item was tabled.
5. Election Rules incorporating the Civil Code change have been generated and a copy provided to the Board of Directors. Homeowners are to be notified thirty days in advance of the meeting when the Board of Directors will be discussing the Election Rules. When the Election Rules are approved by the Board of Directors, they will be provided to the homeowners. The revised election rules provide for blind ballot voting. Discussion was held and a motion was made by Michelle Irvine to discuss the Election Rule Change at the November 13, 2006 meeting. The motion was seconded by Rod Mier and unanimously passed.
6. Solar Light Poles – Manufacture of the solar light information was provided to BTS Electric and Lights R Us. Ken Kunkle of BTS Electric stated that the solar operated fixtures and poles are built to specification for each job. The manufacturer requires several pieces of information be provided to them which requires walking the property, investigation, and then communication to the manufacturer. If the Board would like to formulate this information and provide it to Ken Kunkle, he will contact the manufacturer and obtain a final quote for the fixture. If the Association wants him to formulate the information, there would be a charge. It is BTS Electric's opinion, that depending on the length of time the Association wants the light to work over night, the cost per fixture and pole is in the range of \$3,000-\$6,500. This does not include installation. Discussion was held and a motion was made by Rod Mier to approve three hours for BTS to compile the information for the solar light manufacturer. The motion was seconded by Michelle Irvine and unanimously passed.
7. Notice of Board action was provided to Charles Morrone to proceed with the lien on APN 086-18-037 and foreclosure on APN 086-20-029.
8. The Board requested quotes for monthly landscape maintenance. Pat Forrest provided the Board with a quote received from TruGreen LandCare. The quote is for \$6,200.00 per month. This provides for 1 man, 5 days per week, full time, plus the use of a



mowing crew. If the Association would like the hours cut back, a reduced quote can be provided.

Coast Landscaping was requested to provide a quote. It was not available as of this evening's meeting.

Pat Forrest was requested to get information for the Board regarding the amount of hours included in the current Older's contract. How much has been spent in additional labor (excluding material)? This item was tabled until additional information is received.

Michelle Irvine stated Older's still is not putting the green valve caps back on.

9. The Board of Directors was provided with a letter from the City of Milpitas regarding Russ Bargstadt's application for the Planning Commission. Russ Bargstadt stated that he has an interview with the City tomorrow. The position is as an alternative Council member and there are three other applicants.
10. Backflow Prevention Specialist was asked to perform the test and certification of the last backflow prevention device not previously completed. Additional information is not known at this time.
11. 1205 Fallen Leaf Drive, Lot 488 – A copy of the letter received from the homeowner notifying of a change in address was provided to the Board of Directors. The annual dues have not been paid for 2005 or 2006. The past due invoice was mailed to the homeowner at the new address. There is \$23.19 in late and interest charges. Pat Forrest asked if the Board is willing to waive these charges if the homeowner requests it. A motion was made by Guy Haas, seconded by Lisa Jose, and unanimously passed to deny a request, should one be received, to waive late and interest charges on this account.

#### **APPROVAL OF MINUTES**

A copy of the August 14, 2006 Minutes and Manager's Notes was provided to the Board of Directors.

A motion was made by Guy Haas, seconded by Rod Mier, and unanimously passed to approve the August 14, 2006 Board of Directors' Meeting Minutes and Manager's Notes as presented.





## **FINANCIALS**

Pat Forrest provided the Accounts Payable checks for signature. A motion was made by Guy Haas, seconded by Rod Mier, and unanimously passed to approve and sign the payables for September 2006 as presented.

Financial Summary: For the two months ending August 31, 2006 there is \$100,291.33 in Operating Cash, \$97,742.35 in Reserve Cash, and \$20,239.59 in Accounts Receivable including \$150.00 in Fines. There is a Net Profit of \$123,573.42. This is not an accurate Net Profit inasmuch as the dues are collected one time per year and the expenses are drawn from this amount each month during the year.

A motion was made by Guy Haas, seconded by Lisa Jose, and unanimously passed to approve the August 31, 2006 financial statements as presented.

The \$50,000.00 CD that matured August 17, 2006 was rolled into a new 180-day CD with MB Financial Bank. The maturity date is February 15, 2007. The interest rate being earned is 4.98% with a yield of 5.11%.

Rod Mier wanted to know if the Association could purchase the Jerry's Market building if it became available. Pat Forrest stated this is something that would have to be voted on by the homeowners and it would require a special assessment of the homeowners. The reserves cannot be used for this purpose.

## **OLD BUSINESS**

All OLD BUSINESS items were discussed under MANAGER'S REPORT.

## **NEW BUSINESS**

1. Next Meeting  
Monday, October 9, 2006, at 7:00 p.m., at the Milpitas Community Center
2. Mike Tomlin, Zanker Elementary School, - Mike Tomlin stated that Back to School night is this Thursday. Because of the increased enrollment, it is necessary for Zanker to open two additional classrooms to the school. Zanker Elementary School STAR marks are higher than the State of California requirement. In October there will be a Beautification Day at the school. The school has received BFI grant money in the amount of \$6,000. The bare dirt area around Zanker School will have irrigation and



plant material installed. Mike will provide additional information regarding the exact date of the Beautification Day.

Mike stated that he was glad to hear the passionate comments made by the homeowners regarding the issuance of a hard liquor license this evening.

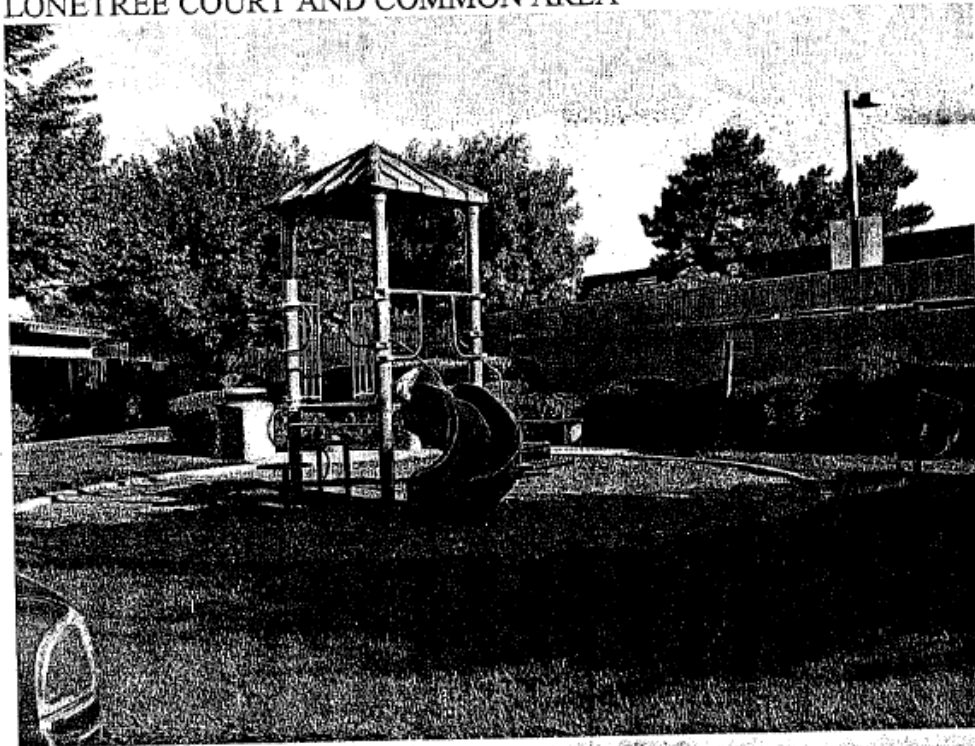
#### **ADJOURNMENT**

A motion was made by Rod Mier, seconded by Guy Haas, and unanimously passed to adjourn the meeting at 8:35 p.m.

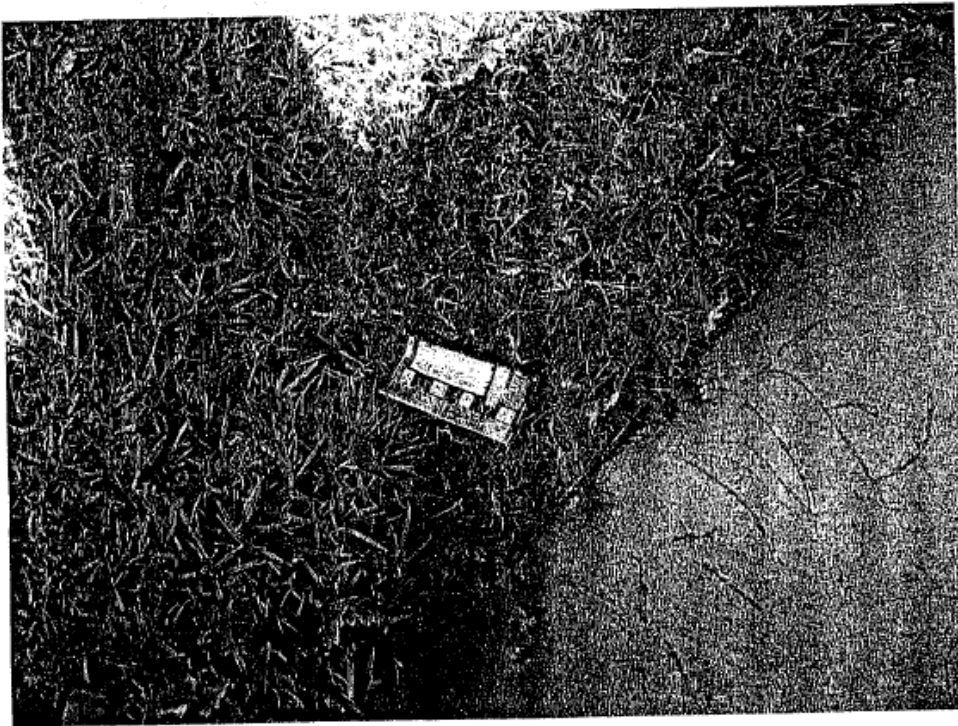


# ATTACHMENT #5

## LONETREE COURT AND COMMON AREA

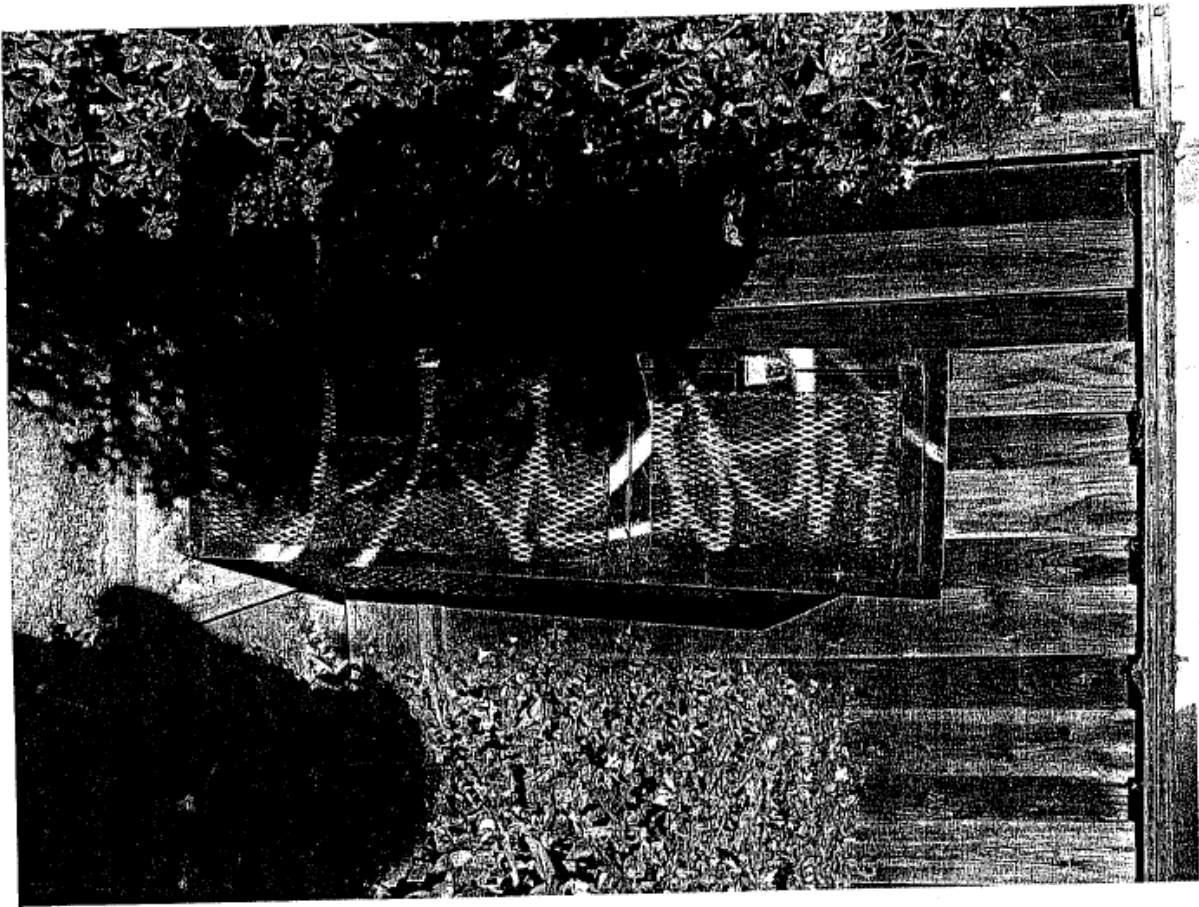






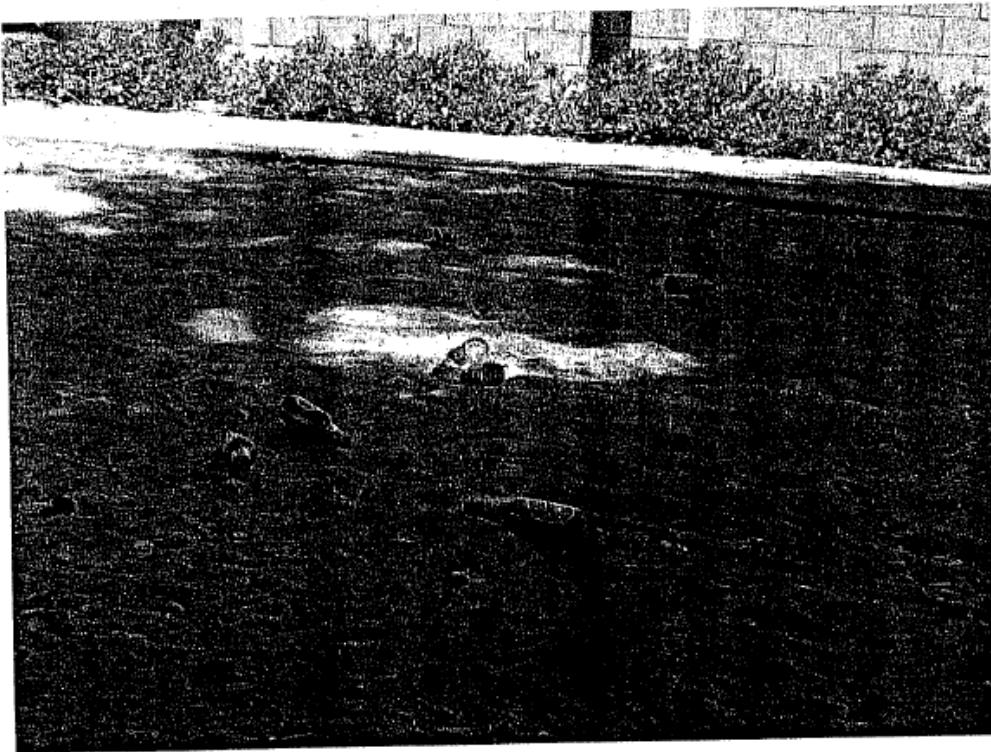
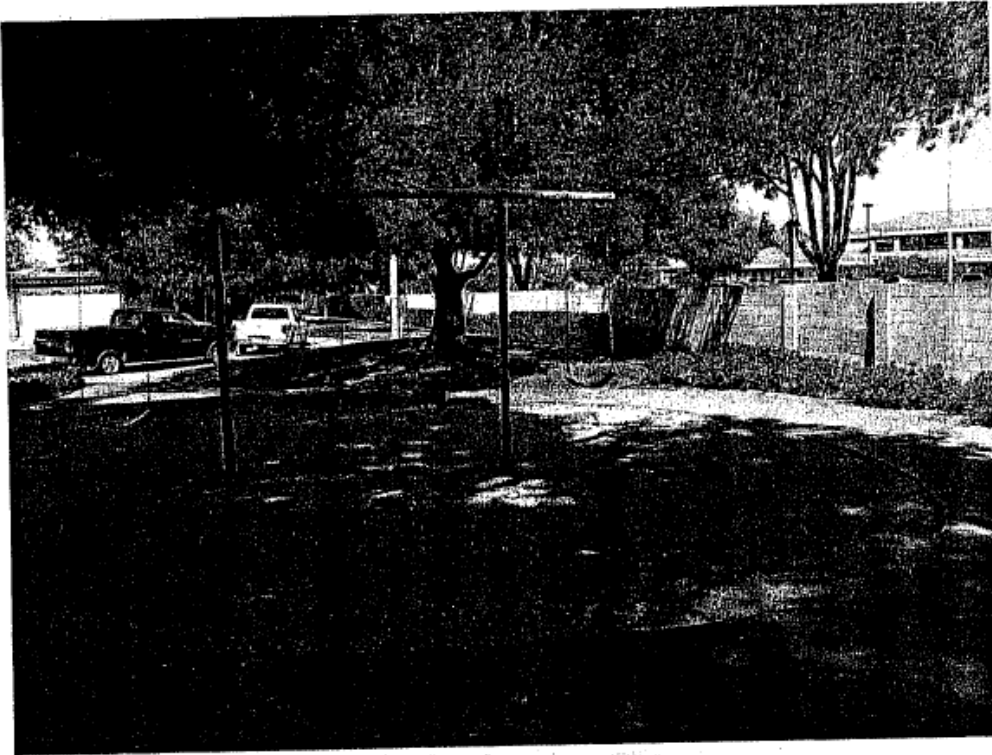




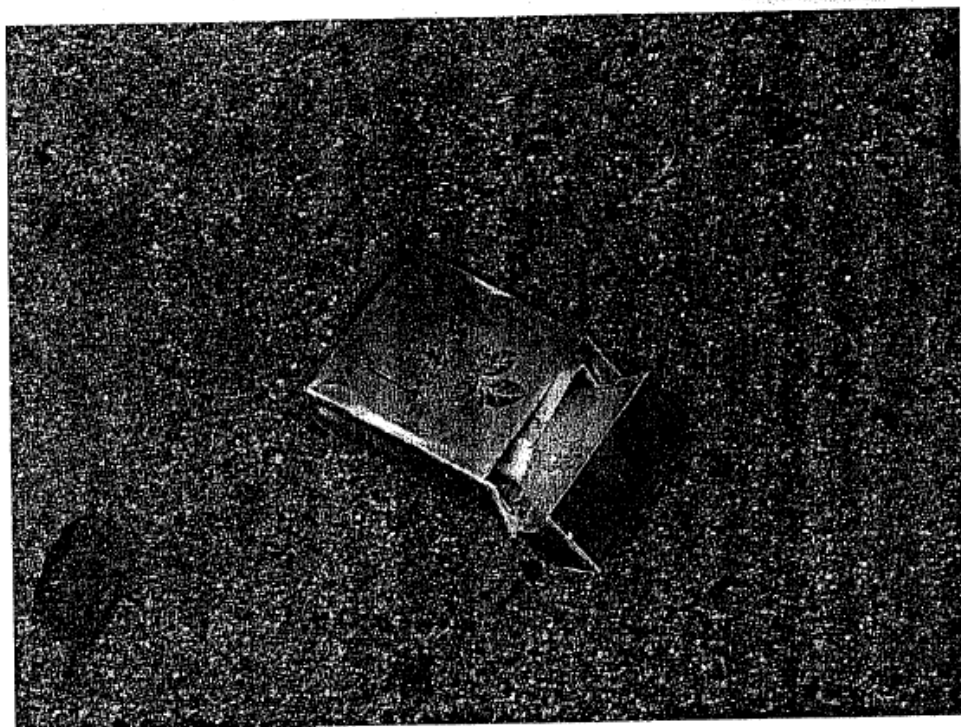




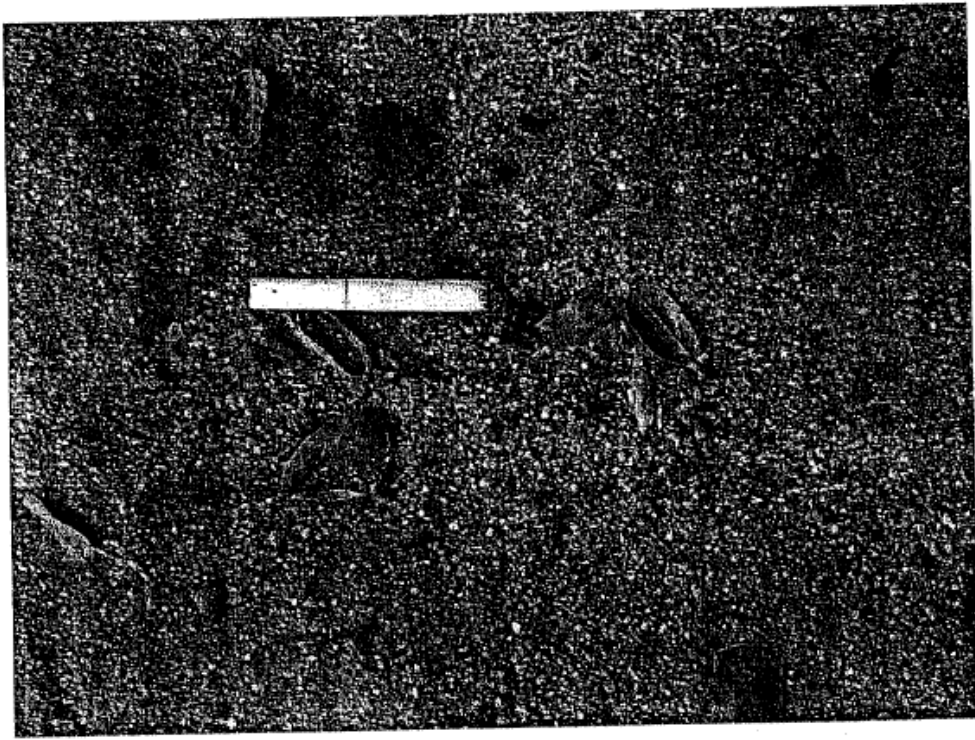
MINI PARK AND COMMON AREA NEXT TO WOODLAND CT AREA







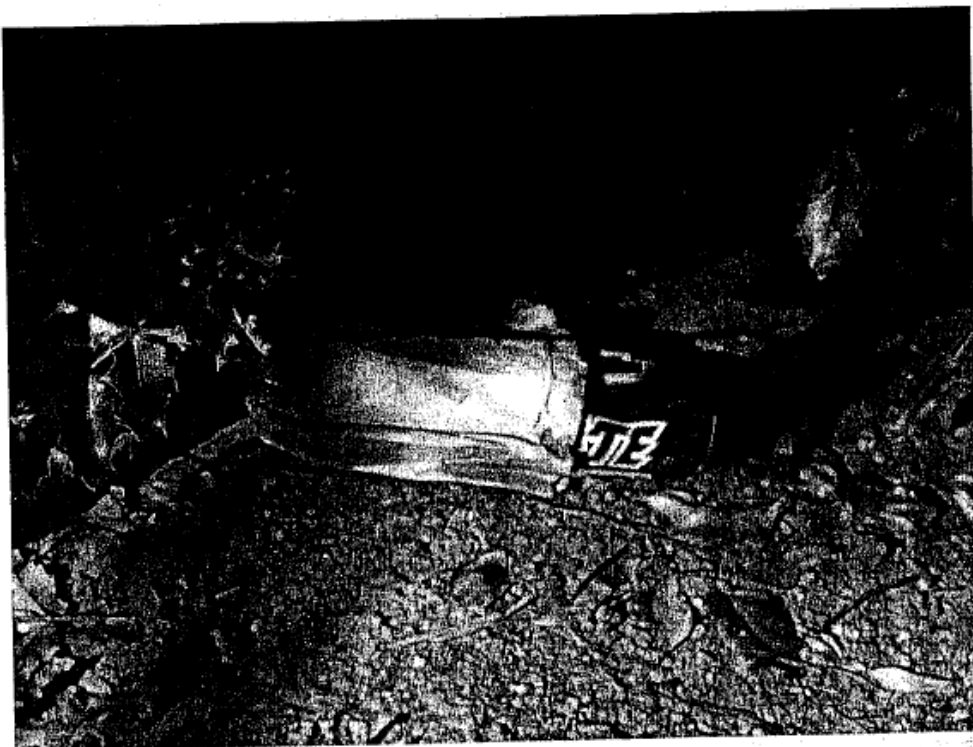


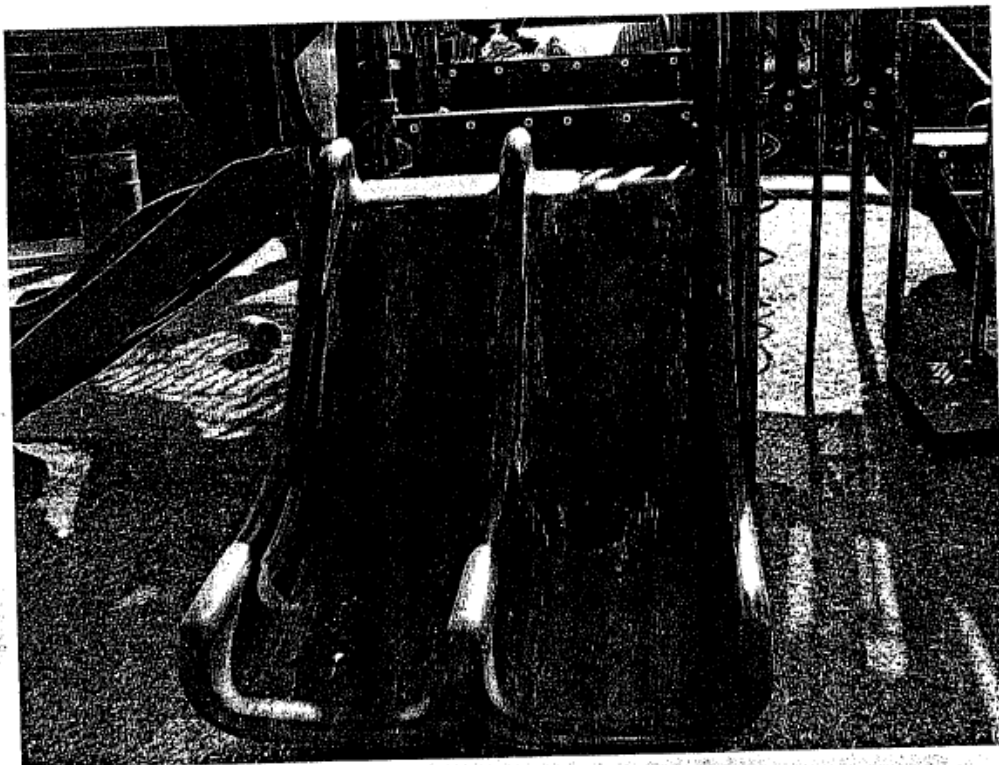




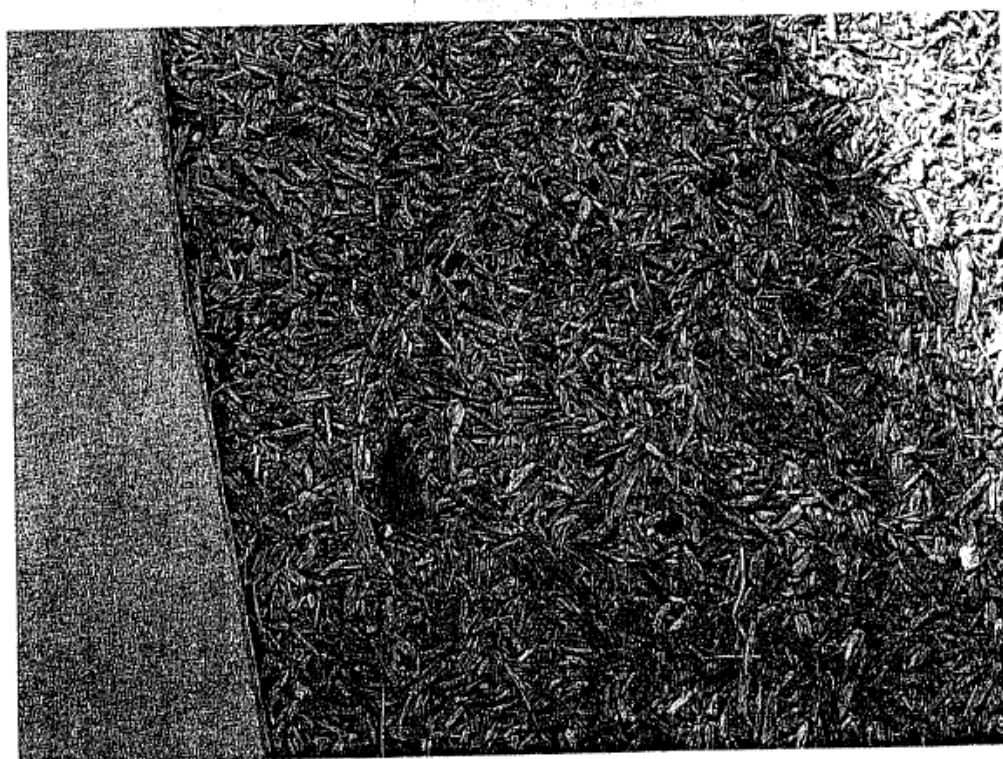


EVENING STAR COURT AND COMMON AREA



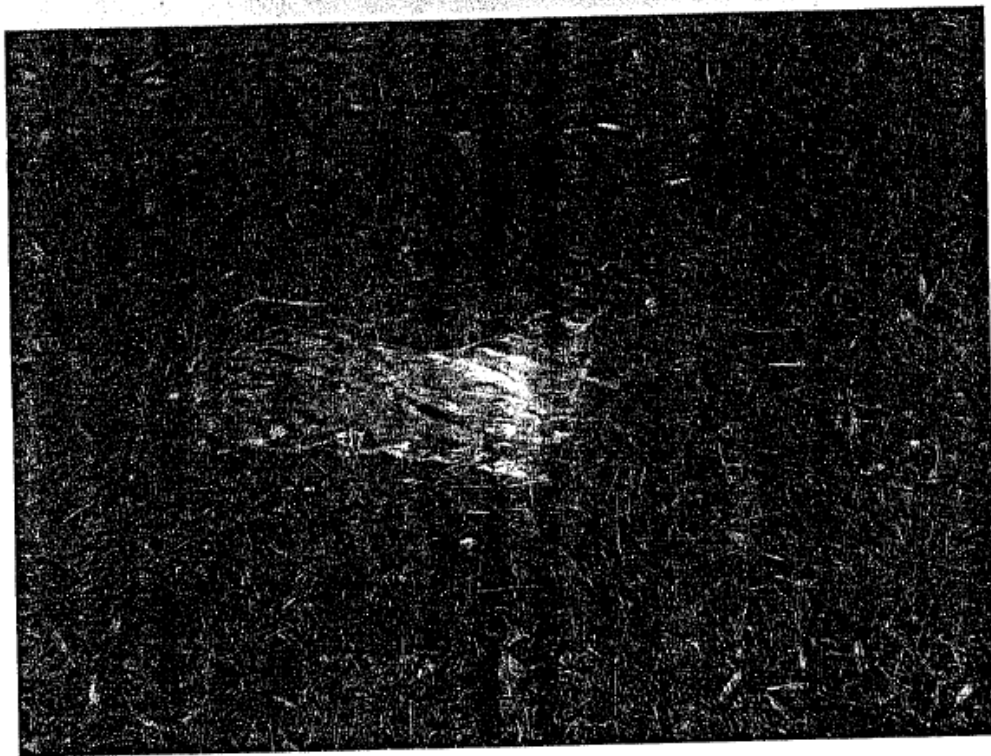




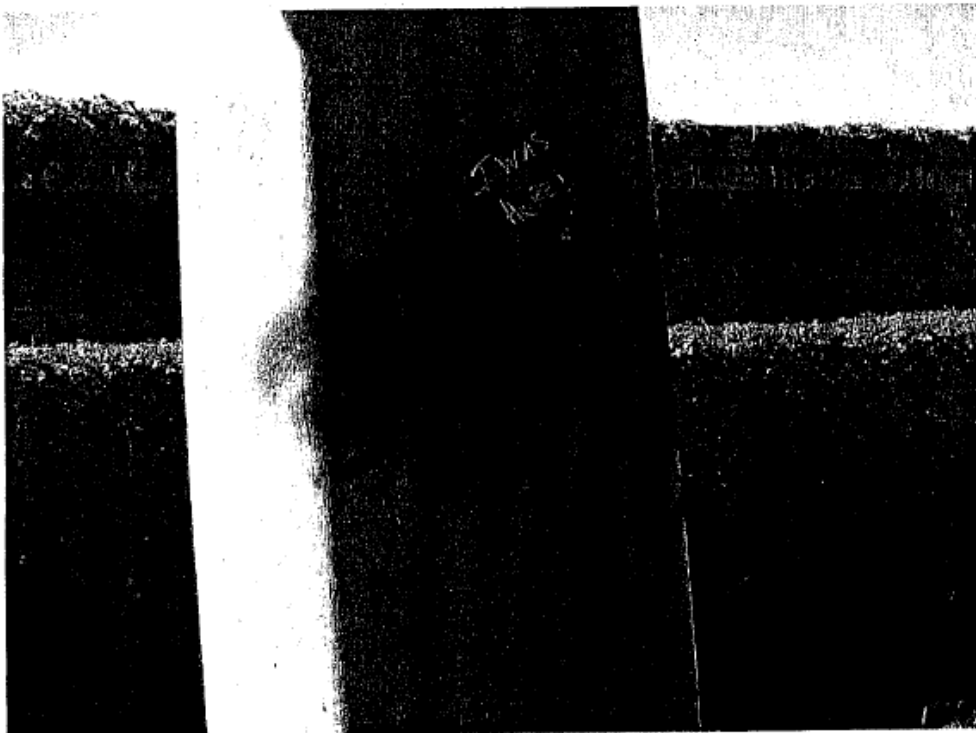
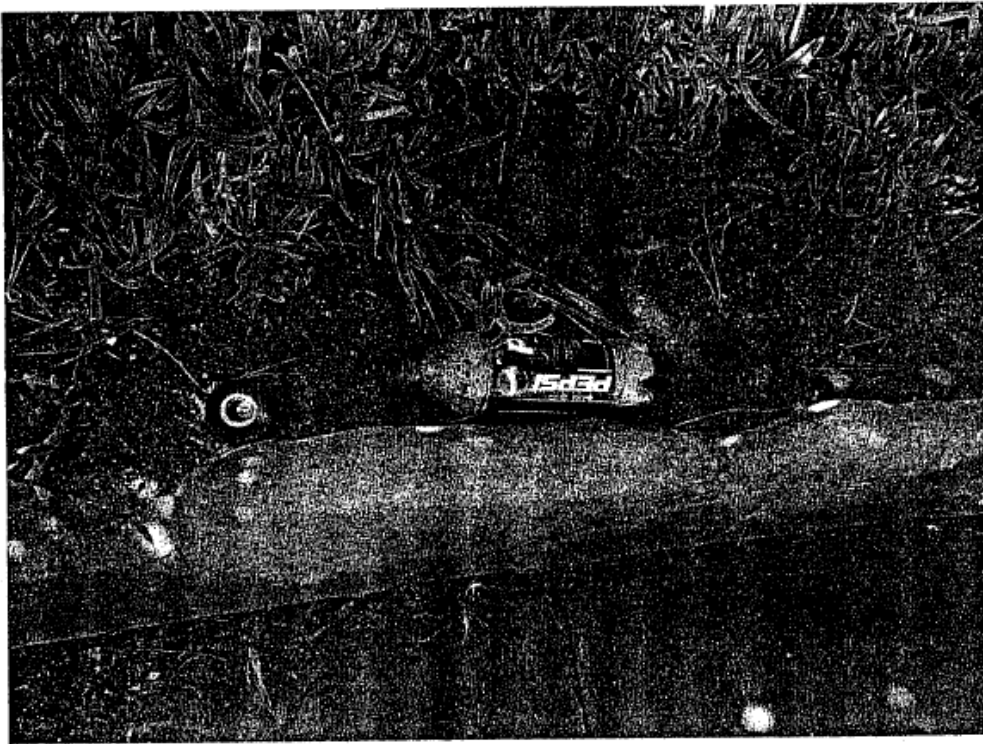




MINI PARK AREA AND COMMON AREAS ALONG HWY 880 AND MONTAGUE









**From:** rickwarren [rickwarren@pacbell.net] **Sent:** Wednesday, 10/25/2006 3:58 PM  
**To:** Cindy Hom  
**Cc:** Tom Williams; 'ASLAM ALI'; 'Bob Sylvia'  
**Subject:** Jerry's Market-REVISED CONDITIONS AND ANALYSIS OF POLICE CALLS



Jerry's Market- Final  
Proposed Conditions



Jerry's Market Police  
Calls-Further Analysis

**Attachments:**

Hello Cindy:

Please distribute this e-mail and the attachments to the Planning Commission for tonight's meeting.

## REVISED CONDITIONS

Mr. Ali has decided to withdraw the offer to pay the HOA for crime prevention measures.

He has increased the amount he will pay to repair the common wall. He now offers to pay 100% of the cost of that repair or replacement up to a maximum of \$50,000.

Attached is the final version of the conditions proposed by Mr. Ali.

## COMMENTS REGARDING STAFF'S ANALYSIS OF POLICE RECORDS

Because Jerry's Market has not been cited by the Milpitas Police or the ABC for any violations in more than 5 years, I was dismayed by staff's analysis of police calls attributed to Jerry's Market that paints an unfounded and unfair picture. Staff started out by reporting 45 police calls to Jerry's Market over the five (5) years from July 2001 to July 2006.

## TIME OF REPORTED CALLS

28 of those calls were reported during daytime hours before 5:00 p.m., 11 were reported between 5:00 p.m. and 11:00 p.m., and 6 of these calls were reported after 11:00 p.m.

## RECORD OF POLICE CALLS SUPPORTS GRANTING APPLICATION

Staff's own analysis indicated that 19 of the police calls from the store's employees to report fraudulent transactions, theft, intoxicated persons and threatening pit bulls. Since Jerry's Market has a constitutional right to report crimes of which it or other customers are the victim, it appears that staff did not rely on these 19 calls to support its recommendation of denial of Jerry's Market application. That leaves 27 calls for service to be analyzed further.

On October 19, you provided me further details from the police department's review of its own investigation reports that indicated that there was no evidence of any nexus or connection in 23 of those 27 calls to the store's operation. A copy of the police department's analysis is attached.

The Police Department's October 18, 2006 analysis concluded that in 23 of those 27 calls for service it had no basis for determining if anyone involved was customer or employee of Jerry's Market. That leaves only four police calls, items 23, 26, 35, and 36, in five years that involved a customer of the store. In item 23, one customer damaged another customer's vehicle in the store parking lot. In item 36, a customer's cell phone was stolen from his car parked in front of the store with the convertible top open. Items 26 and 35 are discussed below.

Staff's report identified "22 incidents of concern that substantiate the negative neighborhood impacts expressed by the neighboring Pines residents." In nearly all of those calls, there is no evidence linking such calls for service to the store's operation. On October 19<sup>th</sup>, I pointed that out to you requested that you delete such calls from your report. Not only did staff include those police calls to support its recommendation of denial, but it emphasized some calls that have absolutely nothing to do with Jerry's Market. For example, staff's report emphasizes items 15, 26, and 35. Those items, excerpted from the police analysis are as follows:

15. November 8, 2002; 10:34 pm [02-312-177]

"Mentally challenged female adult accosted and sexually assaulted by customer in front of business. The suspect exited the store, and walked northbound. The suspect saw the victim, who was walking southbound toward the store. The suspect accosted the victim approximately 40 feet north of the store and sexually assaulted her. The victim's mother reported the incident to police."

OUR COMMENT: Because this happened 40 feet north of the store, and there is no basis to determine if the store's employees had any reason to know it happened, and it is unfair to suggest this is evidence of a problem with the store's operation.

26. September 21, 2003; 3:56 pm [03-264-107]

"Suspicious person detained by officers in front of store. Person arrested for possession of drugs and violation of parole. The suspicious person was a store customer. Officers observed and recognized the person as he walked out of the business. The person was a known parolee. The person's vehicle was parked in front of the business. The officers initiated this event. No call for service was received."

OUR COMMENT: The police recognized this person as a parolee, and found him in possession of drugs. There is absolutely no evidence of any conduct of drug dealing or any other inappropriate behavior that should have been observed by the store's employees. It is unfair for staff to suggest that this incident is evidence of a problem with the store's operation.

35 July 19, 2005; 10:09 pm [05-200-195]

"Two males fighting in front of business. Both involved males were customers of the store. The disagreement between the two began while both were in the store. The fight occurred after they walked out. An anonymous person reported the incident to police."

OUR COMMENT: There is no evidence to indicate that this fight was known to the store's employees. This was a disagreement between two customers that escalated to a fight outside the store. It is unfair for staff to suggest that this incident is evidence of a problem with the store's operation.

Staff's report also points out three incidents in which the persons involved were found with open beer containers, items 6, 7 and 33, however there is no evidence that the beer was purchased from the store.

Staff's report concluded that, based on its analysis of the police calls attributed to Jerry's Market, there was a nexus between those calls and the store's operation.

There is no substantial evidence to support that conclusion.

To the contrary, there is virtually no evidence of any such nexus. After eliminating the calls for service made by an employee to report a crime, the records of the Milpitas Police Department show that Jerry's Market customers were involved in only four calls for service in the past five years. That is evidence of a well run operation, not a police problem.

Therefore, the police records support the granting of the application by Jerry's Market to add spirits to the products it may sell.

## CONCLUSION

I understand that you will distribute this e-mail and the attachments to the members of the Planning Commission for tonight's meeting. Many thanks for your consideration.

Sincerely,

Rick Warren

Richard D. Warren  
Attorney, Mediator and Arbitrator  
929 Fresno Avenue  
Berkeley, CA 94707-2304  
Tel: 510.528.4423  
Fax: 510.528.1123

**EMAIL's ATTACHMENTS:**

**JERRY'S MARKET PROPOSED CONDITIONS**

**REDUCED HOURS OF OPERATION:** Jerry's Market will be open from 6:00 a.m. and close at 11:00 p.m. every night.

We will also close off the rear parking lot from 10:00 p.m. until 6:00 a.m. These changes alone will substantially reduce the potential for noise disruptions to our nearest neighbors.

**LITTER AND GRAFFITI PREVENTION:** On Jerry's Market property, Jerry's Market will pick up litter twice a day and paint over graffiti within one day.

For litter on the Pines' property, a Jerry's Market employee will pick up litter daily in the common area and playground behind Jerry's Market.

**REPAIR OF COMMON WALL:** Jerry's Market will pay the full costs (not to exceed \$50,000) to repair the common wall on our property line with the HOA.

**ADD "GOOD NEIGHBOR" SIGNS:** We have already put up several "Good Neighbor" signs in our parking lot to remind our customers to avoid loud noise and music that might disturb our nearby neighbors.

**IMPROVE VIDEO SURVEILLANCE OF JERRY'S MARKET PARKING AREA:** We will install two more cameras (4 total) to give complete coverage of the parking area and we will keep the video recordings for 14 days and make them available to law enforcement upon request.

**ADD VIDEO SURVEILLANCE OF HOA'S COMMON AREA.** Jerry's Market also offers to the HOA that it will provide and maintain on Jerry's Market property one or more cameras that will view the HOA side of the common wall, provided the HOA will agree that Jerry's Market will not be liable for providing such service.

**SIGNS NOT TO LOITER AND NO DRINKING OF ALCOHOL:** We will provide improved signs reminding our customers not to loiter and prohibiting any drinking of alcohol on our property.

**LIMITING FLOOR AREA THAT MAY DISPLAY ALCOHOLIC BEVERAGES:** To prevent changing our convenience store to a liquor store, no more than 45% of our customer floor area may be used to display alcoholic beverages.

## JERRY'S MARKET ACTIVITY

### July 2001 – July 2006

1. July 27, 2001; 12:11 pm [01-208-054]

Business owner reports having received 2 fraudulent checks.

2. October 15, 2001; 6:16 pm [01-288-160]

Business reports that fraudulent transactions occurred.

3. November 11, 2001; 12:01 am [01-315-001]

Physical fight between two men. Both were separated when officers arrived. One was contacted inside store. **One of the involved combatants reported the incident to police. The fight occurred in front of the store. It is undetermined whether either of the combatants were store customers.**

4. January 7, 2002; 12:15 pm [02-007-063]

Business reports that 2 fraudulent checks were passed.

5. January 9, 2002; 1:06 pm [02-009-080]

Business reports having received a fraudulent check

6. February 2, 2002; 4:47 pm [02-057-100]

**Officers contacted suspicious person in the parking lot of the business. Officers observed that the person was holding an opened container of beer. The person was arrested for an outstanding arrest warrant. It is undetermined whether the person arrested was a store customer. The officers initiated this event. No call for service was received.**

7. February 27, 2002; 4:21 pm [02-058-106]

**Suspicious person stopped by officers in the parking lot of the business. Officers observed that the person was holding an opened container of beer. The person was arrested for an outstanding warrant. It is undetermined whether the person arrested was a store customer. The officers initiated this event. No call for service was received.**

8. March 23, 2002; 5:42 pm [02-082-114]

**Officers contacted suspicious person in the parking lot of the business. Officers observed as the person was urinating against a wall. It is undetermined whether the person arrested was a store customer. The officers initiated this event. No call for service was received.**

**The person was arrested for **two** outstanding arrest warrants.**

## **JERRY'S MARKET ACTIVITY**

**July 2001 – July 2006**

9. April 4, 2002; 9:54 pm [02-094-156]

**Customer walked out of the store after shopping. She called police to report that she saw 2 suspects “tagging” an exterior wall of the business, and she provided suspect information to officers. Officers followed-up and identified the suspects. The business owner was contacted and did not desire any further action from police.**

10. April 5, 2002; 6:36 pm [02-095-131]

**Officers began watching a suspicious person loitering in front of the business. Officers observed the person for at least 30 minutes. The person engaged a passer-by and an apparent exchange occurred. Officers contacted the person, and found that he was in possession of drugs. It is undetermined whether this person was a store customer. The officers initiated this event. No call for service was received.**

11. June 11, 2002; 8:40 pm [02-162-147]

**Officers observed a suspicious person standing in the parking lot of the business, near a motor home. Officers began speaking with the person and determined that he had an outstanding felony warrant for his arrest. The person was arrested. It is undetermined whether this person was a store customer. The officers initiated this event. No call for service was received.**

12. October 18, 2002; 11:24 pm [02-291-204]

**3 adult males physically fighting in front of the business. One male was down on ground with injuries upon arrival of officers. A passer-by went into the store to ask the clerk to call 911 to report the fight. It is undetermined whether the combatants were customers of the store.**

13. October 25, 2002; 6:12 pm [02-298-021]

**Employee reports a burglary to the business occurred.**

14. November 7, 2002; 3:35 pm [02-311-107]

**Employee reports suspect inside store attempting to cash fraudulent check.**

15. November 8, 2002; 10:34 pm [02-312-177]

**Mentally challenged female adult accosted and sexually assaulted by customer in front of business. The suspect exited the store, and walked northbound. The suspect saw the victim, who was walking southbound toward the store. The suspect accosted the victim approximately 40 feet north of the store and sexually assaulted her. The victim's mother reported the incident to police.**

## **JERRY'S MARKET ACTIVITY**

**July 2001 – July 2006**

16 November 23, 2002; 3:04 pm [02-327-106]

**Verbal argument between male and female in front of business. Officers arrived to mediate the dispute. No arrests. An anonymous person reported the incident. It is undetermined whether the two people involved were customers of the store.**

17 December 3, 2002; 10:35 am [02-337-062]

**Officers contacted a suspicious person in the parking lot of the business. Officers discovered that the person had two outstanding warrants for his arrest. It is undetermined whether this person was a customer of the store. The officers initiated this event. No call for service was received.**

18 December 7, 2002; 4:45 pm [02-341-111]

**Employee reports customer attempting to cash bad check**

19 December 11, 2002; 8:42 pm [02-345-175]

**Employee reports fraudulent transaction**

20 February 25, 2003; 10:31 am [03-056-044]

**Employee attempting to detain fleeing customer who tried to cash bad check.**

21 March 1, 2003; 4:24 pm [03-060-120]

**Non-injury auto collision in driveway to business parking lot. One of the involved parties called police to report the incident. Both involved parties were store customers.**

22 May 19, 2003; 2:09 pm [03-139-080]

**A vehicle was stolen from the parking lot of the business. The car had been parked in the lot for 5 days due to engine trouble. The vehicle owner reported the crime to police. It is undetermined whether the vehicle owner was a customer of the business.**

23 June 7, 2003; 11:27 pm [03-158-271]

**Vandalism: One customer of the business intentionally damaged the vehicle of another customer while both were in the parking lot of the store. The victim customer called to report the incident to police.**

24 August 1, 2003; 5:08 am [03-213-038]

**Employee reports burglary to business.**



## **JERRY'S MARKET ACTIVITY**

**July 2001 – July 2006**

25 September 8, 2003; 11:11 am [03-251-073]

**Two pit-bull dogs in front of store scaring customers. The store clerk called to report the incident to police.**

26 September 21, 2003; 3:56 pm [03-264-107]

**Suspicious person detained by officers in front of store. Person arrested for possession of drugs and violation of parole. The suspicious person was a store customer. Officers observed and recognized the person as he walked out of the business. The person was a known parolee. The person's vehicle was parked in front of the business. The officers initiated this event. No call for service was received.**

27 October 3, 2003; 11:54 pm [03-276-248]

**Several males physically fighting in parking lot of business. Officers discovered one involved person with head injuries. Two of the males physically resisted officers when contacted. An anonymous caller reported this incident to police. It is undetermined as to whether the involved parties were store customers.**

28 March 26, 2004; 5:37 pm [04-086-171]

**Employee reports fraudulent transaction at business.**

29 April 23, 2004; 11:10 pm [04-114-239]

**Employee reports intoxicated person sleeping in parking lot for past 5 hours.**

30 June 7, 2004; 6:30 am [04-159-033]

**Stolen vehicle found parked in lot of business. The vehicle was originally stolen in San Jose. The victim happened to find it parked in the lot of the store. The victim called to report this incident to police. The victim was not a store customer.**

31 January 2, 2005; 9:14 pm [05-002-174]

**Employee reports intoxicated person in store causing a disturbance**

32 January 29, 2005; 3:19 pm [05-029-131]

**Mentally challenged person physically assaulted and injured in front of business. Both the victim and suspect were in front of the store when the assault occurred. It is undetermined as to whether the victim or suspect were store customers. The caretaker of the victim reported this incident to police.**

## JERRY'S MARKET ACTIVITY

July 2001 – July 2006

33 February 24, 2005; 4:34 pm [05-055-169]

**“Man down” report in front of business. Officers contact a passed-out intoxicated man. Officers discovered that the intoxicated man was asleep on the sidewalk in front of the business. There was a puddle of vomit and an empty 40 oz. bottle of beer next to him. The person who reported this incident to police was not identified. It is undetermined as to whether the intoxicated man was a store customer.**

34 May 31, 2005; 10:02 am [05-151-073]

**Employee reports suspect attempting to cash stolen check.**

35 July 19, 2005; 10:09 pm [05-200-195]

**Two males fighting in front of business. Both involved males were customers of the store. The disagreement between the two began while both were in the store. The fight occurred after they walked out. An anonymous person reported the incident to police.**

36 August 4, 2005; 12:53 pm [05-216-082]

**Theft from a vehicle parked in front of business. The victim left the top to his convertible down and went inside the store to make a purchase. When he came out a few minutes later, he realized that his cell phone had been stolen. The victim reported this incident to police.**

37 August 30, 2005; 2:43 am [05-242-014]

**Burglary in progress at business. An employee discovered the crime and reported the incident.**

38 January 9, 2006; 3:06 pm [06-009-145]

**Stolen credit card used at business.**

39 January 9, 2006; 3:07 pm [06-009-146]

**Fraudulent check cashed at business.**

40 April 21, 2006; 9:20 pm [06-111-229]

**Suspicious person stopped by officers in lot of business. Arrested for outstanding warrants. It is undetermined whether the suspect was a store customer. The officers initiated this event. No call for service was received.**

## **JERRY'S MARKET ACTIVITY**

**July 2001 – July 2006**

41 May 23, 2006; 12:24 pm [06-143-108]

**Forged check cashed at business.**

42 May 31, 2006; 6:11 pm [06-151-245]

**Suspicious juvenile stopped by officers in front of business. Arrested for violation of probation warrant. It is undetermined whether the suspect was a store customer. The officers initiated this event. No call for service was received.**

43 June 2, 2006; 3:30 pm [06-153-168]

**911 hang-up call from pay phone.**

44 June 29, 2006; 8:03 am [06-180-065]

**Domestic quarrel between male and female while parked in front of business. Female broke window to vehicle. It is undetermined whether either party was a store customer. Correctional Officers from the Elmwood Correctional Facility reported this incident to police.**

45 July 13, 2006; 11:52 pm [06-194-236]

**Several people talking loud and laughing in the lot of business, disturbing neighbors. Officers contacted several people in the lot and instructed them to quiet down. It is undetermined whether these individuals were customers of the store. The person who reported this incident to police was a nearby resident who was disturbed by the noise.**